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Adopted at Meeting of 7/31/74

INDENTURE OF LEASE
DATED AS OF
between
BOSTON REDEVELOPMENT AUTHORITY
and
FANEUIL HALL MARKETPLACE, INC.

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INDENTURE OF LEASE

INDENTURE OF LEASE made and entered into as of
by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic
and corporate organized under the laws of the Commonwealth of Massachusetts
(hereinafter together with any successors or assigns permitted or authorized
by this Lease called "Lessor"), and FANEUIL HALL MARKETPLACE, INC., a
corporation organized and existing under the laws of the State of Maryland
and duly qualified to conduct business as a foreign corporation in the
Commonwealth of Massachusetts (hereinafter together with any successors
or assigns permitted or authorized by this Lease called "Lessee").

W I T N E S S E T H:

WHEREAS, with the assistance of the federal, state and city governments,
Lessor is carrying out the Waterfront Urban Renewal Project pursuant to
the Downtown Waterfront - Faneuil Hall Urban Renewal Plan and the Government
Center Urban Renewal Project pursuant to the Government Center Urban
Renewal Plan (both of which plans are hereinafter defined and hereinafter
called the "Plan"); and

WHEREAS, the Plan permits the renovations and restoration of North
Market Buildings, South Market Building and Quincy Market Building (which
buildings together with certain discontinued streets are shown on Schedule
A attached hereto and hereby made a part hereof); and

WHEREAS, pursuant to the Plan, Lessor has acquired the North Market
Building (with the exception of the Durgin Park Parcel shown on Schedule
A) and South Market Building by exercise of the power of eminent domain;
and

WHEREAS, Lessor has leased Quincy Market Building and portions of
certain discontinued streets from the City (as hereinafter defined)
pursuant to the City Lease (as hereinafter defined); and

WHEREAS, Lessor and Lessee desire to enter in to this Indenture of Lease.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and vaulable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Lease of Premises

Section 1.01. Demise of Property. Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Lessee to be paid, kept, observed and performed, has leased, rented, let and demised, and by those the presents does lease, rent, let and demise unto Lessee, and Lessee does hereby take and hire, upon and subject to the conditions and limitations hereinafter expressed, that certain "Property" (as defined in Section 2.01 hereof), to have and to hold the Property, subject as aforesaid, and subject to the terms, covenants, agreements and provisions hereof, unto Lessee for the uses and purposes described in Article IV hereof for the "Term" (as defined in Section 5.01 hereof).

ARTICLE II

Definitions

Section 2.01. Property. The term "Property" shall mean the parcels of land together with the North Market Building, South Market Building and Quincy Market Building, shown on Schedule "A" and described in Schedule "B" attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon.

Section 2.02. Plan. The term "Plan" shall mean the "Downtown Waterfront Faneuil Hall Urban Renewal Plan" dated April 15, 1964, and recorded with Suffolk Registry of Deeds in Book 7948, Page 527, as amended by an amendment thereto dated April 8, 1965, and the Government Center Urban Renewal Plan dated April 3, 1963, approved by the City Council on May 25, 1964, and recorded at the Suffolk Registry of Deeds in Book 8250, Page 187, and as they may be amended from time to time.

Section 2.03. Sublease. The term "Sublease" shall mean a sublease between Lessee and a "Subtenant" (as defined in Section 2.04 hereof) of any individual parts, floors or areas of the Property which Lessee is permitted to sublet hereunder.

Section 2.04. Subtenant. The term "Subtenant" shall mean any person, firm, corporation or other legal entity occupying any part of the Property under a Sublease.

Section 2.05. Existing Tenants. The term "Existing Tenants" shall have the meaning set forth in Section 4.06 hereof.

Section 2.06. Commission. The term "Commission" shall have the meaning set forth in Section 4.08 hereof.

Section 2.07. Rehabilitation. The term "Rehabilitation" shall mean the restoration and renovation of the Property pursuant to Article X hereof.

Section 2.08. Project Area. The term "Project Area" shall mean the urban renewal project area covered by the Downtown Waterfront - Faneuil Hall Urban Renewal Plan.

Section 2.09. City. The term "City" shall mean the City of Boston, Massachusetts.

Section 2.10. City Lease. The term "City Lease" shall mean that certain Indenture of Lease dated as of the date hereof between the City and Lessor demising to Lessor Quincy Market Building and portions of certain discontinued streets more particularly described therein.

Section 2.11. Commencement Date. The term "Commencement Date" shall mean the date hereof.

Section 2.12. Rent. The term "Rent" shall have the meaning set forth in Section 6.01 hereof.

Section 2.13. Fiscal Year. The term "Fiscal Year" shall mean any consecutive twelve month period commencing upon the first day of June and ending upon the last day of May during the "Term" (as defined in Section 5.01 hereof).

Section 2.14. Tax Payments. The term "Tax Payments" shall mean those amounts to be paid by Lessee to the City pursuant to the provisions of any agreement with respect to taxes between lessee and the City.

Section 2.15. Impositions. The term "Impositions" shall have the meaning set forth in Section 7.01 hereof.

Section 2.16. Improvements. The term "Improvements" shall mean all improvements constructed, restored, or renovated by Lessee pursuant to Article X hereof, including those which are part of the Property as of the date hereof.

Section 2.17. Institutional Lender. The term "Institutional Lender" shall mean a commercial bank, trust company, mutual savings bank, savings and loan association, life insurance company, pension trust fund, mortgage or real estate investment trust having a minimum paid-up capital of one million dollars (\$1,000,000) or other financial institution commonly known as an "institutional lender."

Section 2.18. Leasehold Mortgage. The term "Leasehold Mortgage" shall mean any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, security agreements or any similar security or title retention device which shall, from time to time, create a lien upon the leasehold estate created by this Lease and which shall be security for one or more notes, bonds or other evidences of indebtedness issued by Lessee to an Institutional Lender or held by a Institutional Lender.

Section 2.19. Leasehold Mortgagee. The term "Leasehold Mortgagee" shall mean the Institutional Lender, or its designee, in whose favor a Leasehold Mortgage shall have been created (or if such Leasehold Mortgage is a deed of trust or trust indenture, the trustee named therein), together with any successor or assignee of such Institutional Lender or such designee.

Section 2.20. Preliminary Design Drawings. The term "Preliminary Design Drawings" shall have the meaning set forth in Section 10.01 hereof.

Section 2.21. Construction Cost. The term "Construction Cost" shall mean the total of all direct costs and expenses incurred by Lessee in the actual construction, restoration or rehabilitation or physical improvements as part of the Rehabilitation including, without limitation, the cost of labor, equipment, materials and supplies for construction, fees and expenses paid to contractors and the cost of permits and licenses, but not including any direct costs such as Lessee's overhead, general expenses or fees of architects, engineers, attorneys, accountants and consultants.

Section 2.22. Contractor. The term "Contractor" shall have the meaning set forth in Section 10.06 hereof.

Section 2.23. Certificate of Final Completion. The term "Certificate of Final Completion" shall mean a certificate certified to by the Lessor which shall set forth the date on which substantial completion of the Rehabilitation occurred.

Section 2.24. Certificate of Partial Completion. The term "Certificate of Partial Completion" shall mean a certificate certified to by the Lessor which shall set forth the date on which substantial completion of a portion of the Rehabilitation occurred.

Section 2.25. Final Working Drawings and Specifications. The term "Final Working Drawings and Specifications" shall mean complete:

- (a) architectural drawings, including site development, landscaping and utilities drawings;
- (b) structural drawings;
- (c) electrical and mechanical drawings; and
- (d) final specifications in accordance with the Uniform System for Construction Specifications, Data Filing and Cost Accounting, AIA Document K103,

but not including drawings and specifications relating to Subtenant improvements.

Section 2.26. Architect. The term "Architect" shall mean Benjamin A. Thompson and Associates, Inc. 1 Story Street, Cambridge, Massachusetts or such other architect as may be designated by Lessee and approved by Lessor.

Section 2.27. Taking. The term "Taking" shall refer to a taking (or the sale to a public authority after legal notice or a taking) of all or part of the Property or any interest therein of right accruing thereto, as the result of or in lieu of condemnation or exercise of the power of eminent domain. A taking shall be effective for the purposes of this Lease as of the date on which possession is required to be surrendered.

Section 2.28. Transfer. The term "Transfer" should have the meaning set forth in Section 14.01 hereof.

Section 2.29. Owner. The term "Owner" shall have the meaning set forth in Section 14.01 hereof.

Section 2.30. Event of Default. The term "Event of Default" shall have the meaning set forth in Section 15.02 hereof.

Section 2.31. Redevelopment Agreement. The term "Redevelopment Agreement" shall refer to that certain Redevelopment Agreement dated 1974 by and between Lessor and Lessee, which agreement is hereby incorporated herein by reference.

Section 2.32. Construction Contract. The term "Construction Contract" shall have the meaning set forth in Section 3.07 of the Redevelopment Agreement.

ARTICLE III

Title and Condition of Property

Section 3.01. Title. The Property is subject to:

- (a) the existing state of title thereof as of the Commencement Date;
- (b) any state of facts which an accurate survey of physical inspection thereof might show;
- (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and
- (d) except as provided in Section 3.02, the physical condition of buildings, structures and other improvements and any fixtures, located on the Property as of the Commencement Date, without representation or warranty of any kind by Lessor.

Lessee represents to Lessor that it has examined (i) the title to the Property and (ii) all matters related to subsections (a), (b), (c) and (d) above prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereof.

Section 3.02. Condition of Property. Lessor hereby expressly disclaims any warranties of any nature, express or implied, as to the structural integrity of the Property, and any other warranties of any nature, express, implied or otherwise, except as expressly set forth in this Lease. Lessee hereby accepts the Property "as is" including, but not limited to, those parts of the Property which relate to work performed, and the work so performed, by the Falzarano Construction Company pursuant to the Construction Contract; provided, however, that those portions of the Property which relate to work which is within the scope of work of the Construction Contract shall be accepted "as is" by Lessee when offered by Lessor but subject to Lessor's obligation to enforce all of its rights and remedies against the Falzarano Construction Company and to cause the Falzarano Construction Company to complete the Construction Contract in accordance with its terms. At the request of Lessor, Lessee shall execute and deliver to Lessor a certificate, signed and sworn to by an officer of Lessee, accepting said portions of the Property in an "as is" condition' provided, however, that if Lessee in its reasonable judgment finds that the work has not been completed in accordance with the terms of the Construction Contract, Lessor shall at the request of Lessee and at Lessee's sole cost and expense commence and diligently and in good faith prosecute to completion enforcement of its remedies for the completion of such work in accordance with the terms of the Construction Contract. Such claims shall be decided by arbitration in accordance with the Construction Contract provisions. After such arbitration decision has been received and, any further work required by the decision has been completed pursuant to and in accordance with the terms of such decision Lessee shall, at the request of Lessor, execute and deliver such certificate accepting such property in an "as is" condition.

Section 3.03. Other Contractors. Lessee acknowledge that Lessor has entered into the Construction Contract and a contract for certain utilities work with Modern Continental Construction Company, Inc. and that the City of Boston has entered into a contract with the Thomas Construction Company to perform certain work relating to Quincy Market Building. Lessee accepts the Property subject to the rights and obligations of the parties to such contracts and agrees not to interfere with the performance of such contracts.

ARTICLE IV

Use of Property; Quiet Enjoyment

Section 4.01. Use. Lessee shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in the Plan and this Lease. The term "uses specified in the Plan" or similar language in this Lease shall refer to the use provisions of the Plan whether or not the term of the Plan has expired and shall include the land and all building, housing, and other requirements or restrictions of the Plan pertaining to such land;
- (b) not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof; and
- (c) give preference in the selection of Subtenants for commercial space built on the Property to the maximum extent practicable to business firms displaced from the Project Area because of clearance, redevelopment and rehabilitation activities, which firms desire to occupy space and are willing and financially able to pay rents or prices equal to rents or prices charged business firms engaged in businesses of a

similar type or quality for similar or comparable space built as part of the Rehabilitation. Lessor shall cooperate fully with Lessee in connection with Lessee's attempts to establish which prospective Subtenants are entitled to the benefits of this Subsection 4.01 (c).

Section 4.02. Covenants Running with the Land. The agreements and covenants provided in Section 4.01 hereof shall be covenants running with the land and shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Lease, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Lessor, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, the United States of America (hereinafter called the "United States") (in the case of the covenant provided in Subsection 4.01(b) against Lessee and every successor in interest to the leasehold estate in the Property, or any part thereof or any interest therein. The agreement and covenant provided in Subsection 4.01(a) hereof shall remain in effect throughout the Term, at which time such agreement and covenant shall terminate, and the agreements and covenants provided in Subsection 4.01(b) hereof shall remain in effect without limitation as to time, provided, that such agreements and covenants shall be binding on Lessee, each successor in interest to the leasehold estate in the Property, and every part thereof, respectively, only for such period as such successor or party shall have an interest in the Property or any part thereof.

Section 4.03. Beneficiaries. In amplification, and not in restriction, of the provisions of Section 4.02 hereof, it is intended and agreed that Lessor and its successors and assigns shall be deemed beneficiaries of

the agreements and covenants provided in Section 4.01 hereof, and the United States shall be deemed a beneficiary of the covenant provided in Subsection 4.01(b) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Lessor and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Lessor or the United States has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. Lessor shall have the right, in the event of any breach of any such agreement or covenant, and the United States shall have the right in the event of any breach of the covenant provided in Subsection 4.01(b) hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 4.04. The Plan. Lessor shall perform and enforce or all of the provisions of the Plan required to be performed or enforced by it. Lessor shall submit to Lessee for its approval (which approval shall not be unreasonably withheld or delayed) all proposed changes to the Plan which would (in the reasonable judgment of Lessor) materially affect Lessee's operation or use of the Property or Lessee's rights and obligations under this Lease.

Section 4.05. Quiet Enjoyment. Lessor represents and warrants that it has the right, power and authority to enter into this Lease and that Lessee, upon paying the Tax Payments, Rent (as defined in Section 6.01 hereof) and additional rents reserved herein and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Property during the Term, without hindrance, ejection or molestation by Lessor or any person or persons claiming under Lessor. Lessee shall have the right to terminate this Lease or to seek a rent abatement for a material breach of this covenant.

Lessor and its agents may enter and examine the Property at all reasonable times in order to determine whether Lessee is in compliance with the provisions hereof, and the City may enter and examine that portion of the Property leased by the City to Lessor under the City Lease at all reasonable times in order to determine whether Lessor is in compliance with the provisions of the City Lease.

Section 4.06. Existing Tenants. Subject to the provisions of Subsection 4.01(c), Lessee shall have no obligations to any person, firm or corporation presently occupying any part of Quincy Market Building, whether under lease, license or otherwise, other than those persons, firms and corporations listed on Schedule C attached hereto and made part hereof (hereinafter referred to as the "Existing Tenants"), and Lessee's obligations with respect to the Existing Tenants shall be limited to the agreements of Lessee set forth in this Article IV. Lessee covenants and agrees that:

- (a) For the period of time during which the Rehabilitation of Quincy Market Building is being performed, Lessee shall offer

a Sublease to each Existing Tenant of space within Quincy Market Building which Sublease will, except for, conditions and acts which are not within the control of Lessee, permit the Existing Tenant to continue to operate its present retail business in Quincy Market Building. Such a Sublease shall provide for a per square foot rental equal to the Existing Tenant's present square foot rental set forth on Schedule C.

In the case of Existing Tenants which, because of the Rehabilitation, must be moved to temporary locations, Lessee shall pay for the cost of moving such Existing Tenant's portable fixtures, equipment and inventory, and any such temporary move shall be accomplished with the least interruption by Lessee practicable under the circumstances.

- (b) Prior to the issuance of a Certificate of Final Completion or a Certificate of Partial Completion relating to Quincy Market Building, whichever occurs first, Lessee shall offer to enter into a Sublease, with each Existing Tenant with which a Sublease has been entered into pursuant to Subsection 4.06(a), of space within Quincy Market Building or elsewhere within the Property which is in a fully finished condition ready for occupancy and use (except for tenant fixtures and equipment such as display cases, refrigeration and water heaters) and generally consistent with the Existing Tenant's present retail operation. Any such Sublease shall provide for:

- (i) a term expiring on a date no less than three years from its commencement and
- (ii) a per square foot rental equal to no more than such Existing Tenant's present per square foot rental as shown on Schedule C.

(c) Ninety (90) days prior to the expiration of any Sublease entered into pursuant to clause (b) above, Lessee shall offer to renew the Sublease of any Existing Tenant then occupying such space and operating its business. Any such renewal shall be at a rental equal to the fair market value of such space for businesses of comparable type and upon such other terms and conditions as are consistent with the terms of Subleases to other Subtenants of the Quincy Market Building operating comparable types of businesses.

(d) Disputes between Lessee and any Existing Tenant as to any of the matters contained in this Section 4.06 shall, at the election of either, be referred to the Commission for decision by it. Such decisions of the Commission shall be final and binding upon Lessee and any Existing Tenant unless, within thirty (30) days after any such decision, Lessee or such Existing Tenant elects to pursue the remedies available to it under law or equity in any court of competent jurisdiction.

Provided, however, that any Existing Tenant electing to accept any offer made by Lessee pursuant to clause (a), (b) or (c) above, shall agree with Lessee (i) at all times to conform the operation of its business to the general character, as it may be from time to time, of the retail market.

(ii) to accept space in the Quincy Market Building of such size and location as, in the good faith judgment of Lessee, shall be necessary in order to satisfy the merchandising, tenant mix, circulation and other standards of the overall plan for the subleasing and operation of the Quincy Market Building; (iii) to otherwise conduct its business in accordance with the standards of operation of the retail market to be conducted in the Quincy Market Building following Rehabilitation thereof;

and (iv) not to make any direct or indirect transfer or assignment of its rights under such Subleases; provided, further, that any Existing Tenant which is offered a Sublease in accordance with Section 4.05 shall have ninety (90) days within which to accept such a Sublease by execution and delivery thereof. Failure of any Subtenant to so accept such a Sublease shall automatically terminate Lessee's offer to enter into a Sublease and the rights of such Existing Tenant hereunder.

Section 4.07. Chapter 188 of the Massachusetts Acts and Resolves of 1970. Lessor and Lessee acknowledge the existence of Chapter 188 of the Massachusetts Acts and Resolves of 1970 and agree to abide by the provisions thereof, and Lessor shall cause the City to comply with the provisions of Section 8.03 of the City Lease.

Section 4.08. The Commission. Lessee shall cooperate with Lessor and the City in the formation of a commission (hereinafter called the "Commission") which shall be composed of the Mayor of the City and two persons appointed by Mayor, the Director of the Lessor, and one person appointed by Lessee. The Commission shall meet at such times as it shall deem appropriate or at the request of Lessor, Lessee, or any Existing Tenant for the purpose of reviewing:

- (a) the proposed uses of the Property and the mix of retail uses to be included in the Property after Rehabilitation;
- (b) design controls for the facade treatment of ground floor spaces;
- (c) Lessee's program for promotion of the Property and merchandising the portions thereof to be subleased to Subtenants;

- (d) the terms and conditions of Sublease offered to the Existing Tenants pursuant to Section 4.06 of this Lease; and
- (e) any matters which are brought before it pursuant to its other functions as set forth in Section 4.06.

Lessee shall not use the street floor of Quincy Market Building, for any purpose other than as a meat, cheese and produce market but may use said floor for the sale of food for on premises or off premises consumption or for any related purpose of the same general character (without after) first obtaining the written approval of the Commission.

ARTICLE V

Term of Lease

Section 5.01. Term. The term of this Lease (hereinafter called the "Term") shall be the period commencing on the Commencement Date and ending at midnight on the date which is ninety-eight years and three hundred and sixty-four days after the commencement date of the City Lease or on that date resulting from an earlier termination as hereinafter set forth.

ARTICLE VI

Rent

Section 6.01. Rent. Lessee covenants to pay to Lessor, at Lessor's address for notice set forth in Section 16.01 hereof or at such place or to such person as Lessor from time to time may designate in writing by notice to Lessee, in such coin or currency of the United States as shall at the time of payment be legal tender for the payment of all debts, public or private, as rent (hereinafter called the "Rent") for the Property, commencing on the Commencement Date and thereafter throughout the Term, an annual rental equal to ten dollars (\$10.00).

Rent shall be payable in advance on the Commencement Date and on the first day of each Fiscal Year thereafter and, in the event that the first and last days of the Term are not June 1 and May 31, respectively, Rent will not be prorated but will be payable in full for such partial Fiscal Year.

Lessee covenants to pay and discharge when the same shall become due, as additional rent, all other amounts, liabilities and obligations which Lessee by or pursuant to this Lease assumes or agrees to pay or discharge, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof and, in the event of any failure on the part of Lessee to pay or discharge any of the foregoing, Lessor shall have all rights, powers and remedies as are provided herein or by law in the case of nonpayment of the Rent or additional rent. Interest at the rate of four and one-half (4-1/2) percentage points per annum above the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by the Chase Manhattan Bank of New York, N.A. on all late or overdue payments of Rent and additional rent relating to obligations which Lessor shall have paid on behalf of Lessee shall accrue and be due to Lessor with respect to each such late or overdue payment commencing on the date when payment thereof should have been received by Lessor and ending on the date when Lessor receives payment.

Section 6.02. Net Lease. This Lease is net lease and Rent, additional rent and all other sums payable hereunder to or on behalf of Lessor, shall be paid without notice or demand, and without set-off, counterclaim, abatement, suspension, deferment, deduction or defense except as otherwise expressly provided in Sections 4.05 and 15.10.

Section 6.03. No Termination. Except as otherwise expressly herein provided, this Lease shall not terminate, nor shall Lessee have the right to terminate this Lease or be entitled to the abatement of any rent hereunder or any reduction or allocation thereof, nor shall the obligations of Lessee under this Lease be otherwise affected, by reason of any damage to or the destruction of all or any part of the Property from whatever cause, or a taking of the Property or any portion thereof by condemnation, requisition or otherwise for any reason whatever, or the prohibition, limitation or restriction of Lessee's use of all or any part of the Property, or the interference with such use by any person, or by reason of any eviction by paramount title or otherwise (subject, however, to the provisions of Section 4.05 hereof), or by reason of the foreclosure of any Leasehold Mortgage or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of parties hereto that the obligations of Lessee hereunder shall be separate and independent covenants and agreements, that the Rent, additional rent and all other sums payable by Lessee hereunder shall continue to be payable in all events, and that the obligations of Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease; provided, however, that, during the continuance of any such damage, destruction, Taking, prohibition, limitation, restriction, interference, eviction or foreclosure, Lessee shall not be obligated to perform any obligations which as a result thereof are no longer capable of being performed.

Section 6.04. Obligation Continuing in the Event of Bankruptcy.

Lessee covenants and agrees that it will remain obligated under this Lease in accordance with its terms, and that Lessee will not take any action to terminate, rescind or avoid this Lease, by virtue of the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor, or by virtue of any action with respect to this Lease which may be taken by any trustee or receiver of Lessor or any assignee of Lessor in any such proceeding, or by any court in any such proceeding; provided, however, that nothing in this Section 6.04 shall be construed as a waiver of any rights or remedies otherwise available to Lessee under this Lease.

ARTICLE VII

Taxes, Assessments and Impositions

Section 7.01. Taxes. As additional rent under this Lease and in addition to the Tax Payments and Rent hereinabove provided for, Lessee shall pay or cause to be paid (i) all charges for water, gas, light, heat, telephone, electricity, power and other utility and communication services at any time rendered or used on or about the Property, and (ii) except as provided in Section 7.02 and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, all assessments, water rates, sewer rents and charges, all sales and use taxes which may be levied or assessed against or payable by Lessee on account of the acquisition, leasing or use of the Property or any portion thereof, and all other governmental charges of every character, general and special, ordinary and extraordinary, and whether or not the same shall have been in the express contemplation of the parties hereto (all of which taxes, assessments, water rates, sewer rents and charges

and other governmental charges, are, subject to the exclusions therefrom expressed in Section 7.02, hereinafter called "Impositions"), which are assessed, levied, confirmed, imposed or become a lien upon the Property; provided, however, that if by law, any such Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, and shall pay such installments as may become due during the term of this Lease as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

Section 7.02. Excluded Impositions. The term "Imposition" does not include, and nothing in this Lease contained shall require Lessee to pay, any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax, or any income, excess profits or revenue tax of Lessor, or any other tax, assessment, charge or levy upon the Rent payable by the Lessee under this Lease, unless any such tax, assessment, charge or levy is imposed or levied upon or assessed against Lessor in substitution for or in place of any other tax assessment, charge or levy referred to in Section 7.01. Any tax, assessment, charge or levy imposed, levied or assessed against Lessor in substitution for or in place of any other tax, assessment, charge or levy referred to in Section 7.01 shall be deemed to be an "Imposition" and shall be payable by Lessee if specifically determinable, and only to the extent that such substitute Imposition would be payable if the Property were the only property of Lessor subject to such Imposition.

Section 7.03. Tax Receipts. Lessee shall, upon request of Lessor, furnish to Lessor for inspection by it, official receipts of the appropriate taxing authority or other evidence satisfactory to Lessor evidencing the payment of any Imposition.

Section 7.04. Permitted Contests. Lessee shall not be required to pay, discharge, or remove any Imposition (including penalties and interest), upon or against the Property, or any part thereof, so long as Lessee shall in good faith contest the same or the validity thereof by appropriate legal proceedings, and shall give to Lessor prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Property, or any part thereof, to satisfy the same, and provided, further, that Lessee shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by Lessor from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure or forfeiture of the Property or any part thereof, by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such Imposition and all penalties, fines and interest which can be assessed thereon. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, Lessor will promptly return to Lessee such security as Lessor shall have received in connection with such contest. Any such proceedings to contest the validity or amount of Imposition or

to recover back any Imposition paid by Lessee may be brought by Lessee at Lessee's expense, in the name of Lessor or in the name of Lessee or both, as Lessee may deem advisable and Lessor shall cooperate with Lessee in any such proceeding shall be brought by Lessee, Lessee shall indemnify and save harmless Lessor against any and all loss, cost or expense or any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon Lessor in connection therewith.

Section 7.05. Apportionment of Impositions. Any Imposition relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is prior to or subsequent to the Term, shall, whether or not such Imposition shall be assessed, levied, imposed, or become a lien upon the Property or shall become payable during the Term, be apportioned and adjusted between Lessor and Lessee as of the Commencement Date or last day of the Term, as the case may be, so that Lessor shall pay that proportion of such Imposition which that part of such fiscal period included in the period of time prior to the Commencement Date or subsequent to the end of the Term bears to such fiscal period, and Lessee shall pay the remainder thereof. With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments thereof which become due and payable subsequent to the end of the Term, and Lessee shall pay all such installments which become due and payable at any time during the Term even though payment is postponed beyond the end of the Term by Lessee.

Section 7.06. Compliance with Laws. Lessee shall, at its sole cost and expense, comply with and shall cause the Property and all Subtenants thereof to comply with (i) all federal, state, county, municipal

and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Property or any part thereof, or the use thereof, includes those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Property. Lessee shall comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Property.

Section 7.07. Right to Contest Laws. Nothing herein shall limit the right of Lessee to contest the validity or enforceability of any statute, law, rule, order, regulation or ordinance with which Lessee or any Subtenant may be requested to comply under Section 7.06.

ARTICLE VIII

Discharge of Liens

Section 8.01. Discharge of Liens. Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property), encumbrance or other charge upon the Property or any part thereof or upon Lessee's leasehold interest therein; provided, however, that Lessee shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Property by the act of Lessor.

Section 8.02. Right to Contest Liens. Lessee shall have the right to contest in good faith and by appropriate legal proceedings, the

validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien. In the event of such contest, Lessee shall give to Lessor reasonable security, as may be required by Lessor, to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Property or any part thereof by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such lien or such claim for lien. On final determination of such lien or such claim for lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Lessee's expense, and upon such payment and release or satisfaction, Lessor shall promptly return to Lessee such security as Lessor shall have received in connection with such contest.

Section 8.03. Protection of Lessor. Nothing in this Lease shall be construed as constituting the consent of Lessor, express or implied to the performance of any labor or the furnishing of any materials or any specific improvements, alteration of or repair to, the Property or any part thereof; by any contractor, subcontractor, laborer or materialman, nor as giving Lessee any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner that would give rise to the filing of mechanics liens or other claims against the fee of the Property. Lessor shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Lessor may deem necessary for the protection of Lessor and of the Property from mechanics' liens or other claims. In addition, but subject to Section 8.02 hereof, Lessee shall make, or cause to be made prompt payment of all moneys due and

legally owing by Lessee to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Property and any buildings, structures or improvements thereon.

ARTICLE IX

Mortgages; Rights and

Duties of Mortgagees

Section 9.01. Prohibited Encumbrances. Except as provided in Section 9.02, Lessee shall not:

- (a) Engage in any financing or other transaction creating any mortgage upon the Property or upon Lessee's leasehold estate therein;
- (b) place or suffer to be placed upon the Property, or Lessee's leasehold estate therein, any lien or other encumbrance (other than a lien upon the said leasehold estate for taxes levied but not delinquent or payable with penalty); or
- (c) suffer any levy or attachment to be made on the Property or on Lessee's leasehold estate therein, other than such levy or attachment as may result from a foreclosure of a Leasehold Mortgage.

Any such mortgage, encumbrance or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

Section 9.02. Permitted Encumbrances. At any time and from time to time during the Term and without obtaining the approval of Lessor, Lessee may assign or encumber the estate created by this Lease by way of one or more Leasehold Mortgages; provided, however, that notwithstanding any foreclosure thereof, Lessee shall remain liable for the payment of

the Rent and additional rent reserved in this Lease and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

Section 9.03. Notices to Mortgagees. Promptly after assigning or encumbering the leasehold estate, pursuant to Section 9.02 of this Lease, Lessee shall furnish Lessor with a written notice setting forth the name and address of the Leasehold Mortgagee. From and after the receipt of such notice, Lessor shall furnish said Leasehold Mortgagee with any notice sent to Lessee pursuant to this Lease, hereof and no such notice shall be deemed to have been properly given unless a copy thereof shall have been sent to such Leasehold Mortgagee; provided, however, Lessor shall not be obligated to furnish notices to any Leasehold Mortgagee the name and address of which have not been provided to Lessor by Lessee or such Leasehold Mortgagee pursuant to the provisions of this Section 9.03.

Section 9.04. Notice to Lessor. Lessee shall notify Lessor promptly of any other lien or encumbrance which has been created on or attached to the Property or to Lessee's leasehold estate therein whether by act of Lessee or otherwise.

Section 9.05. Rights and Obligations of Leasehold Mortgagee. If a Leasehold Mortgagee shall acquire the leasehold estate in the Property by foreclosure of its Leasehold Mortgage or otherwise, then, in such event, this Lease shall continue in full force and effect so long as the Leasehold Mortgagee is not in default hereunder. For the period of time during which the Leasehold Mortgagee or any purchaser at foreclosure of a Leasehold Mortgage holds the leasehold estate, the Leasehold Mortgagee or such purchaser shall become liable and be fully bound by the provisions of this Lease; provided, however, that the Leasehold Mortgagee or such purchaser shall not be bound by or liable under the provisions of this

Lease for the period of time prior or subsequent to the period of time during which it holds the leasehold estate.

ARTICLE X

Rehabilitation

Section 10.1. Preliminary Design Drawings. Lessor acknowledges that prior to the execution of this Lease, Lessee has submitted to Lessor and Lessor has approved the following plans (the "Preliminary Design Drawings") with respect to the proposed restoration and renovation of the Property:

- (i) a Site Plan showing the Property, traffic circulation, streets utilization, paving materials, lighting, landscaping, utilities and other basic improvements;
- (ii) A Building Plan indicating general organization of space, floor plans, elevations, sections, materials, lighting and signing standards; and
- (iii) Interior Standards indicating general treatment, materials, lighting and signing standards to be imposed to control Subtenant improvements;

all of which are more specifically identified in Schedule D attached hereto and made a part hereof.

Section 10.02. Final Working Drawings. Not later than sixty days after the Commencement Date, Lessee shall submit to Lessor Final Working Drawings and Specifications prepared by the Architect in accordance with the previously approved Preliminary Design Drawings, the Plan and this Lease. Upon receipt thereof, Lessor shall review the Final Working Drawings and Specifications for conformity with the Preliminary Design Drawings, the Plan and this Lease, and within thirty (30) days thereof shall notify Lessee of its approval or disapproval in writing, setting forth in detail any grounds for disapproval. Lessor's right of review

of the Final Working Drawings and Specifications shall be limited to consideration of developments or refinements of the Preliminary Design Drawings, to review of new elements which were not presented in the Preliminary Design Drawings, and to their conformity with the standards relating to governmental consents, approvals or permits required for the performance of the Rehabilitation. If no notice of disapproval is delivered to Lessee within thirty (30) days after the submission of the Final Working Drawings and Specifications, or any resubmission thereof as hereinafter provided, they shall be deemed approved. In the event of a disapproval, Lessee shall, within thirty (30) days after the date Lessee received the written notice of such disapproval, resubmit the Final Working Drawings and Specifications to Lessor, altered to meet the grounds of disapproval. The resubmission shall be subject to the review and approval of Lessor, in accordance with the procedure hereinabove provided for an original submission, until the same shall be approved by Lessor, but if Lessee shall fail to submit Final Working Drawings and Specifications which are consistent developments or refinements of the Preliminary Design Drawings on or before that date which is 150 days after the Commencement Date, Lessor shall have the right to terminate this Lease pursuant to Article XV.

From time to time during the development of Final Working Drawings and Specifications, Lessee will consult with Lessor and make available to Lessor such information, studies and preliminary designs as Lessor may reasonably request.

The work depicted and described on the Final Working Drawings and Specifications approved by Lessor pursuant to this Section 10.02 is referred to herein as the "Rehabilitation". The Rehabilitation shall be

accomplished in a good and workmanlike manner and in accordance with the Final Working Drawings and Specifications approved by Lessor pursuant to this Section 10.02 and any subsequent modification thereof approved by Lessor.

Section 10.03 Works of Art. Lessee shall provide as part of the Rehabilitation works of art reasonably satisfactory to Lessor and shall expend for such works of art a sum at least equal to one percent (1%) of the Construction Cost. In this connection, Lessee shall include in the Final Working Drawings and Specifications submitted to Lessor a general program for employment of art to support and enhance the Rehabilitation. The term "works of art" as used herein shall be deemed to include ornaments, arrangements, or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, and other objects having aesthetic merit; provided, however, that in calculating the amount expended for works of art pursuant to this Section 10.03, Lessee shall be given a credit in an amount equal to the sums expended by Lessee (less any amount expended by Lessee for the construction of escalators or equipment designed to move people to or from such exhibit) for its share of an exhibit to be constructed for Boston 200 Corporation.

Section 10.04. Handicapped Persons. It is the general policy of Lessor that all new buildings constructed in urban renewal project areas shall be so designed to accommodate persons who are physically handicapped. In furtherance of this policy, Final Working Drawings and Specifications shall include provisions conforming insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities

Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which specifications are hereby incorporated herein by reference. Lessor shall take into consideration the provisions and objectives of such specifications in its review of and action upon the Final Working Drawings and Specifications.

Section 10.05. Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or at the request of Lessee, all necessary safeguards for the protection of workmen and the public.

Section 10.06. Conditions to Commencement of Rehabilitation. Lessee shall not commence the Rehabilitation, or any stage thereof, unless and until it shall have delivered to Lessor:

- (a) a copy of a building permit issued by the Building Department of the City covering the Rehabilitation or the stage thereof which Lessee proposes to commence, together with evidence satisfactory to Lessor that all application fees in connection therewith have been paid;
- (b) a copy (certified by Lessee to be true and correct) of the contract between Lessee and the general contractor (hereinafter called the "Contractor") engaged by Lessee for the Rehabilitation or stage thereof which Lessee proposes to commence, together with a Letter of Intent executed by the Contractor substantially in the form of Schedule E attached hereto and made a part hereof, in which the Contractor undertakes to carry out all of the provisions of Section 18.02 hereof relating to the work to

be performed by the Contractor and those engaged by him and the requirements of the Lessor's "Equal Opportunity Compliance Policy", adopted February 20, 1969, a copy of which is attached hereto, marked Schedule F and made a part hereof;

- (c) a copy (certified by Lessee to be true and correct) of a commitment issued by an Institutional Lender, or other evidence reasonably satisfactory to Lessor, whereby such Institutional Lender agrees to furnish construction financing of the Rehabilitation (or stage thereof which Lessee proposes to commence), together with evidence satisfactory to Lessor that Lessee has equity capital which, when combined with the financing to be provided by such Institutional Lender, is adequate to complete the Rehabilitation (or stage thereof which Lessee proposes to commence);

Section 10.07. Commencement and Completion of Rehabilitation.

Lessee agrees for itself and every successor in interest to the leasehold estate in the Property, or any part thereof, that Lessee will take all steps necessary to enable it to, and that it will, commence the Rehabilitation on or before that date not later than thirty (30) days after the date on which the Final Working Drawings and Specifications are approved and that it will diligently prosecute and complete the Rehabilitation on or before that date which is twenty-four (24) months after the commencement of the Rehabilitation; provided, however, that:

- (a) Lessee shall not be obligated to commence the Rehabilitation prior to the substantial completion of all work required to be performed pursuant to the Construction Contract with respect to Units No. 26 through 47, inclusive, (as defined in the Construction Contract);

(b) Lessee's obligation to complete the Rehabilitation within the time provided herein shall be subject to the substantial completion of all work pursuant to the Construction Contract not later than August 1, 1974; and

(c) Lessee's obligations under this Section 10.07 are subject to:

- (i) the provisions of Section 15.11;
- (ii) the observance by Lessor of its obligations not to materially delay Lessee by reason of Lessor's act, failure to act or failure of reasonable cooperation; and
- (iii) the timely performance by the Lessor and the City of any and all obligations or commitments relating to improvements or other work on or about the Property arising out of and more particularly described in Sections 3.03, 3.04, 3.08 and 3.09. of the Redevelopment Agreement;

provided, that, in the event Lessee intends to avail itself of the provisions of clause (ii) or (iii) hereof, Lessee shall give written notice to Lessor not more than fifteen (15) days from the date Lessee is delayed by reason of the failure of observance or performance by the Lessor or the City of any of the matters described in said clause (ii) or (iii).

Lessor covenants and agrees that it shall cause all work with respect to Units No. 26 through 47, inclusive, (as defined in the Construction Contract) to be completed in strict accordance with the terms of the Construction Contract on or before June 7, 1974.

Lessor further covenants and agrees that it will cause the remainder of the Construction Contract to be substantially completed in accordance with its terms (including without limitation enforcement of any of

Lessor's remedies in the Construction Contract for the failure of Falzarano Construction Company to complete such work, all as provided in Section 3.02 hereof) on or before August 1, 1974, regardless of whether such completion is prevented or delayed by reason of any cause including those set forth in Section 15.11 hereof. Notwithstanding any provision or agreement herein to the contrary, any failure to perform the foregoing covenant and agreement of Lessor shall be deemed to be a failure of a material condition on which this Lease is entered into and, if any such failure shall occur, then, in addition to any other rights or remedies which it may have at law or in equity, Lessee shall be entitled to terminate this Lease and its obligations hereunder by giving Lessor written notice of such termination; provided, however, that during the pendency of any delay occasioned by any of the causes set forth in Section 15.11, or during the period of time in which the Authority is diligently enforcing any of its remedies under the Construction Contract for the failure of the Falzarano Construction Company to complete the Construction Contract in accordance with its terms, Lessee's sole remedy shall be to terminate this Lease without any liability on the part of Lessor.

Notwithstanding any of the foregoing, Lessor shall not be obligated to expend more than \$2,509,648 in payment for work performed under the Construction Contract.

It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Lease, be, to the fullest extent permitted by law and equity, binding

for the benefit of the community and Lessor and enforceable by Lessor against Lessee and every successor in interest to or of the leasehold estate in the Property or any part thereof or any interest therein. Until the Rehabilitation has been completed, Lessee shall make monthly reports, in such detail as may reasonably be requested by Lessor, describing as to the actual progress of Lessee with respect to the Rehabilitation.

Notwithstanding anything herein to the contrary, Lessee shall not be obligated to commence the Rehabilitation, or any stage thereof, unless and until Lessee shall have obtained all governmental consents, approvals, permits or variances which may be required for the performance of the Rehabilitation (hereinafter called the "Permits"), or the stage thereof which Lessee proposes to commence. Promptly following approval by Lessor of the Final Working Drawings and Specifications pursuant to Section 10.02, Lessee shall apply for the Permits and shall make reasonable efforts to obtain the same; provided, however, that Lessee shall not be obligated, in order to obtain the Permits, to make or consent to changes in the Final Working Drawings and Specifications which would have the effect of increasing Lessee's cost of completing the Rehabilitation. In the event that notwithstanding good faith and diligent efforts on its part Lessee shall be unable to obtain the Permits within ninety (90) days after Lessor's approval of the Final Working Drawings and Specifications, Lessee may terminate this Lease and its obligations hereunder by giving Lessor written notice of such termination not later than thirty (30) days following the expiration of such ninety (90) day period. Lessor shall cooperate with and assist Lessee in every reasonable way in Lessee's efforts to obtain the Permits.

Section 10.08. Cooperation Agreement. Lessor shall, during the Term of this Lease comply with the terms and provisions of the Cooperation Agreement relating to the Downtown Waterfront-Urban Renewal Plan between it and the City, dated June 24, 1964 (which agreement is hereby incorporated herein by reference) and shall enforce all of its rights thereunder.

Section 10.09. Parking on Parcel E-8. Lessor shall use its best efforts to cause a parking garage to be constructed prior to the completion of the Rehabilitation on Parcel E-8 (as shown on Schedule A and used as a structure containing facilities for the parking of not less than four hundred (400) standard size automobiles, which facility shall be available to the public and shall be governed by a rate structure designed to encourage frequent turnover rather than long-term parking. Lessor shall use its best efforts to cause said parking garage to remain in operation for a period of twenty years from the date of issuance of the Certificate of Final Completion.

Section 10.10. Parking on Parcel D-10. Lessor shall cause Parcel D-10 (shown on Schedule A) to be operated in its present condition, until December 31, 1976, as a ground level parking facility of approximately one hundred (100) standard size automobiles, which facility shall be open to the public and shall be governed by a rate schedule designed to encourage frequent turnover. Prior to December 31, 1976, Lessor shall cause a study to be made of the parking needs of the area and shall determine any future use of the area in accordance with the findings of such a study.

Section 10.11. Development of Other Parcels. Lessor shall proceed, as expeditiously as practicable under prevailing economic conditions, to cause the development of those parcels abutting and in close proximity

to the Property which are scheduled for development pursuant to the Plan.

Section 10.12. Certificate of Final Completion. When the Rehabilitation has been completed and the Property is substantially ready for occupancy, Lessor shall issue to Lessee a Certificate of Final Completion which shall be in recordable form and shall be conclusive evidence of the fact that the Rehabilitation has been completed. If any designated portion of the Rehabilitation is completed prior to substantial completion of the Rehabilitation, Lessor shall, at the request of Lessee, issue to Lessee a Certificate of Partial Completion; provided, however, that Lessor shall retain the right to rescind such a Certificate of Partial Completion if the portion of the Rehabilitation which is not completed at the time of the issuance of the Certificate of Partial Completion is not, due to an Event of Default by Lessee, completed thereafter in accordance with the provisions of this Lease.

If Lessor shall refuse or fail to issue a Certificate of Final Completion or Certificate of Partial Completion in accordance with the provisions of this Section 10.12, Lessor shall, within thirty (30) days after written request by Lessee, provide Lessee with a written statement, indicating in adequate detail in what respect Lessee has failed to complete the Rehabilitation (or stage thereof) in accordance with the provisions of this Lease, and what measures or actions will be necessary, in the opinion of Lessor, for Lessee to take or perform in order to obtain a Certificate of Final Completion or a Certificate of Partial Completion. If Lessor shall refuse or fail to provide Lessee with such a written statement within thirty (30) days of a request therefor by Lessee, the Certificate of Final Completion or Certificate of Partial

ARTICLE XI

Maintenance, Ownership

and Alteration of Improvements

Section 11.01. Maintenance. Subject to the provisions of Article X, Lessee shall, at all times and at its expense, keep and maintain the Property, including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto in good and safe condition and repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and nonstructural, foreseen and unforeseen and ordinary and extraordinary changes and repairs of every kind and nature which may be required to be made upon or in connection with the Property or any part thereof in order to keep and maintain the Property in good and safe condition and appearance. Lessor shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature or description to the Property or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or to maintain the Property or any part thereof in any way, and Lessee hereby expressly waives the right to make repairs at the expense of Lessor, which right may be provided for in any statute or law in effect at the time of the execution and delivery of this Lease or any other statute or law which may thereafter be enacted.

Section 11.02. Ownership. Title to all Improvements shall be and remain in Lessee until the expiration of the Term, unless this Lease shall be sooner terminated as herein provided, and upon such expiration or sooner termination, title to such Improvements as are then remaining shall automatically pass to, vest in, and belong to Lessor without

further action on the part of either party and without cost or charge to the Lessor, except that in the event of the expiration or sooner termination of this Lease and if, at that time, any Leasehold Mortgagee shall exercise its option to obtain a new lease for the remainder of the Term pursuant to Section 15.07 hereof, then such title thereto shall automatically pass to, vest in and belong to such Leasehold Mortgagee or any designee or nominee of such Leasehold Mortgagee permitted hereunder, until the expiration of the Term, unless the Term shall thereafter be sooner terminated as otherwise herein provided. Lessor and Lessee covenant that to confirm the automatic vesting of title as provided in this Section 11.02, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be required by the other for that purpose. During the Term, Lessee shall be entitled to claim depreciation on the Improvements and all equipment, fixtures and machinery therein contained, for all taxation purposes.

Section 11.03. Encroachments. In the event that any buildings, structures or other improvements to the Property, whether situated on the Property on the Commencement Date or thereafter constructed thereon, shall encroach upon any property, street or right-of-way adjoining or adjacent to the Property, or shall violate the agreements or conditions contained in any restrictive covenant affecting the Property or any part thereof, or shall hinder or obstruct any easement or right-of-way, then, promptly after written request of Lessor or of any person affected by any such encroachment, violation, hindrance, obstruction, or impairment, Lessee shall, at its expense, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impair-

ment, whether the same shall affect Lessor, Lessee or both, or (ii) make such changes in the buildings, structures and other improvements to the Property and take such other action as shall be necessary to remove such encroachments, hindrances or obstructions and to end such violations or impairments, including if necessary the alteration or removal of any building, structure or other improvements to the Property. Any such alteration or removal shall be made in conformity with the requirements of Section 11.05, and in the case of any such removal, to the same extent as if removals were alterations under the provisions of this Article XI.

Section 11.04. Alterations and Additions. Lessee shall not make or permit to be made any material alteration of, addition to or change in the Improvements, nor demolish all or any part of the Improvements, without the prior written consent of Lessor, which consent Lessor shall not unreasonably withhold. In requesting such consent, Lessee shall submit to Lessor detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. For purposes of this Section 11.04:

- (a) any proposed alteration, addition or change shall be deemed to be material, and
- (b) Lessor's consent shall be deemed to be reasonably withheld if the proposed alteration or change:
 - (i) affects the structural aspects of any of the Improvements,
 - (ii) substantially alters the exterior appearance or any of the Improvements, or
 - (iii) alters the character of any of the Improvements

provided, however, that notwithstanding the provisions of this Section 11.04, Lessee or any Subtenant may also make or permit to be made any material alteration of, addition to or change in the Improvements without the consent of Lessor if such alteration, addition or change would not have required the approval of Lessor if it were included as a part of the Rehabilitation performed pursuant to Article X.

Section 11.05. Compliance During Alterations. All work done in connection with each such addition, alteration or change shall comply with the requirements of any insurance policy required to be maintained by Lessee hereunder and with the orders, rules and regulations of the National Fire Protection Association or any other body exercising similar functions. Lessee shall promptly pay all costs and expenses of each such addition, alteration, substitution or replacement and shall discharge all liens filed against the Property arising out of the same. Lessee shall procure and pay for all permits and licenses required in connection with any such addition, alteration, substitution or replacement. At Lessee's requests, Lessor shall join in applications for any such permits and licenses where joinder therein by the owner of the Property is required by law.

ARTICLE XII

Condemnation

Section 12.01. Total Taking. In case of a Taking (other than for temporary use or of only the leasehold estate hereunder) of the fee of the entire Property, this Lease shall terminate as of the date on which such Taking shall be effective. In case of a Taking (other than for temporary use) of such substantial part of the Property as shall result, in the good faith judgment of Lessee, in the Property remaining after

such Taking (even if restoration were made) being economically unsuitable for the use being made of the Property at the time of such Taking, Lessee, at its option, may terminate this Lease by written notice given to Lessor within sixty (60) days after such Taking. Any Taking of the Property of the character referred to in this Section 12.01, which results in the termination of this Lease is referred to as a "Total Taking".

Section 12.02. Partial Taking. In the event of a Taking of a portion of the Property, which is not a Total Taking, then and in that event:

- (a) this Lease shall remain in full force and effect as to the portion of the Property remaining immediately after such Taking, without any abatement or reduction of Rent, or any other sum payable hereunder;
- (b) Lessee will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Section 15.10) restoration of the Property as nearly as possible to its condition and character immediately prior to such Taking, except for any reduction in area caused thereby; provided that, in case of a Taking for temporary use, Lessee shall not be required to effect such restoration until such Taking is terminated. Such a restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Lessor; and
- (c) In the event the estimated amount of such restoration exceeds the amount of the award resulting from the Taking, Lessee may,

at its option, give written notice to Lessor of its intent to terminate this Lease, and this Lease shall terminate on the date which is thirty (30) days after Lessor's receipt of such notice unless Lessor shall within said 30-day period agree to pay such excess.

Section 12.03. Application of Awards. Awards and other payments on account of a Taking (less costs, fees and expenses incurred by Lessor, Lessee and the "Depository" (as hereinafter defined) in connection with the collection thereof), shall be applied as follows:

- (a) Net awards and payments received on account of a Taking, other than (i) a Taking for temporary use, (ii) a Taking of only the leasehold estate hereunder or (iii) a Total Taking, shall be held and applied to pay the cost of restoration of the Property. The balance, if any, remaining shall be divided between Lessor and Lessee as they may agree and, in the absence of such agreement, such balance shall be paid to Lessor and Lessee in the ratio, as nearly as practicable, which (A) the then "Fair Market Value" (as hereinafter defined) of Lessor's reversionary interest in the Property bears to (B) the then Fair Market Value of Lessee's interest in the remainder of the Term of this Lease.
- (b) Net awards and payments received on account of (i) a Taking for temporary use of (ii) a Taking of only the leasehold estate created by this Lease shall be held and applied, first, to the payment of Rent becoming due hereunder and Tax Payments; and, second, to the payment of the periodic installments of interest and principal becoming due on the indebtedness secured

by any Leasehold Mortgage affecting Lessee's interest in the Property; provided that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Property, such portion shall be held and applied as provided in the first sentence of clause (a) of this Section 12.03.

The balance, if any, of such awards and payments shall be paid to Lessee.

- (c) Net awards and payments received on account of a Total Taking shall be paid as set forth in the second sentence of clause (a) of this Section 12.03, provided that any determination of the respective Fair Market Value of Lessor's and Lessee's interests shall be made as if the Term of this Lease had not terminated.
- (d) In the event that the Lease is terminated pursuant to Subsection 12.02(c), all net awards and payments shall be paid to Lessor.

Section 12.04. Notice of Taking. In case of a Taking of all or any part of the Property thereon or the commencement of any proceedings or negotiations which might result in such Taking, the party having notice of such Taking or of the commencement of any such proceedings or negotiations shall promptly give written notice thereof to the other party. Lessor and Lessee may each file and prosecute their respective claims for an award, but all awards and other payments on account of a Taking shall be governed by the provisions of this Article XII as though but one payment or award were made in respect of such Taking.

Section 12.05. Rights of Mortgagees. All awards or other payments received on account of a Taking shall be paid to the holder of the first Leasehold Mortgage affecting Lessee's interest in the Property, and, if

there shall be none, then such awards or payments shall be paid to a bank or trust company selected by Lessee and approved by Lessor (which approval shall not be unreasonably withheld). Such Leasehold Mortgagee, bank or trust company is referred to herein as the "Depository." All such awards or other payments made by reason of any Taking shall be held in trust by the Depository until payable pursuant to the provisions hereof.

Section 12.06. Fair Market Value. The term "Fair Market Value" as used in this Article XII means the price, as of the date in question, which a seller, willing but not obligated to sell, would accept for the Lessor's reversionary interest in the Property or the Lessee's interest in the estate created by this Lease (as the case may be), and which a buyer, willing but not obligated to buy, would pay therefor in an arms length transaction. Fair Market Value shall be determined by the parties or, if the parties are unable to agree thereon, by the following procedure. Whenever the parties are unable to agree as to the Fair Market Value of the Lessor's reversionary interest in the Property or the Lessee's interest in the estate created by this Lease (as the case may be), either party may give written notice of such disagreement to the other party and in such notice shall designate the first appraiser (the "First Appraiser"). Within fifteen (15) days after the service of such notice the other party shall give written notice to the party giving the first notice, which notice shall designate the second appraiser (the "Second Appraiser"). If the Second Appraiser is not so designated within or by the time above specified, then the party designating the First Appraiser may request appointment of the Second Appraiser by the Chief Judge of the United States District Court for the District of Massachusetts or

any successor federal court of original jurisdiction. The First and Second Appraisers so designated or appointed shall meet within ten (10) days after the Second Appraiser is appointed and if, within thirty (30) days after the Second Appraiser is appointed, the First and Second Appraisers do not agree upon the Fair Market Value of the respective interests of the parties (as the case may be), they shall appoint a third appraiser (the "Third Appraiser") who shall be a competent and impartial person; and if they shall be unable to agree upon such appointment within ten (10) days after the time aforesaid, the Third Appraiser shall be selected by the parties themselves, if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request that such appointment be made by the Chief Judge of the United States District Court for the District of Massachusetts or any successor federal court of original jurisdiction. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act. Each party shall pay the fees and expenses of the appraiser appointed by such party, or in whose stead, as above provided, such appraiser was appointed, and the fees and expenses of the Third Appraiser, and all other expenses, if any, shall be borne equally by both parties. Any appraiser designated to serve as above provided, shall be disinterested, shall be a member of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), and shall be familiar with property values in metropolitan Boston, Massachusetts. The appraisers shall

determine the Fair Market Value of the respective interests of the parties in question. A decision joined in by two of the three appraisers shall be the decision of all the appraisers. After reaching a decision, the appraisers shall give written notice thereof to Lessor and Lessee which notice shall state the Fair Market Value so determined and the Fair Market Value so stated shall be considered Fair Market Value for the purposes of this Lease and shall be binding upon Lessor and Lessee until such time as a new determination (if any) of such Fair Market Value shall be required to be made under the terms of this Lease. If the appraisers shall fail to reach a decision within 90 (ninety) days after the appointment of the third appraiser, either party may make application to any court of competent jurisdiction for a determination of such court of the Fair Market Value of Lessor's reversionary interest in the Property and Lessee's interest in the estate created by this Lease as of the date in question.

ARTICLE XIII

Insurance; Restoration and

Reconstruction of Property

Section 13.01. Insurance. During the Term, Lessee at its own cost and expense and as additional rent shall keep the Property insured continuously with the following kinds of insurance and with coverage in amounts not less than stated below in this Section 13.01, written by companies of recognized standing which are authorized to transact the business of insurance in the Commonwealth of Massachusetts and are well-rated, in the opinion of the Lessor, by national rating organizations, and such insurance shall name as the insureds Lessor and Lessee, as their interests may appear:

- (a) Fire and extended coverage insurance in amounts equal to the actual replacement cost (without deduction for depreciation) of the Property and equipment.
- (b) Such comprehensive general public liability insurance as will protect Lessee and Lessor, their agents and employees, from any and all claims and damages for personal injuries, or death, or from damages to any property of Lessee or of the public, which may arise out of or in connection with the performance of any work or operations by Lessee in, on or over the Property during the Rehabilitation whether said work or operations be by Lessee, or its contractors or subcontractors, or by anyone directly or indirectly employed by any of them. The amount of comprehensive general public liability insurance to be maintained by Lessee during the construction period shall be not less than one million dollars (\$1,000,000) for injuries or death sustained by any one person and no less than two million dollars (\$2,000,000) for injuries or death sustained by two or more persons in any one accident and not less than three million dollars (\$3,000,000) for property damage.
- (c) Immediately upon the issuance by the Lessor of the Certificate of Final Completion, Lessee shall secure and thereafter maintain in full force and effect throughout the Term general public liability insurance in such amounts as Lessor may, from time to time, deem adequate.
- (d) Workmen's compensation insurance covering all persons employed by Lessee in connection with any work done on or about the Property with respect to which claims for death or bodily

injury could be asserted against Lessor, Lessee or the Property, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency from time to time in force.

- (e) Such other insurance on the Property in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property similar to the Property, including war-risk insurance when and to the extent obtainable at reasonable cost from the United States or any agency thereof.
- (f) Rental or business interruption insurance protecting Lessee and Lessor from any loss of revenue (including rental payments at a level equal to those paid for the payment period immediately preceding any such loss) due to any insurable loss which may interrupt such rental payments.

Section 13.02. Continuation of Insurance. Each such insurance policy shall be written to become effective at the time Lessee becomes subject or exposed to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Lessee is subject or exposed to such risk or hazard.

Section 13.03. Blanket Policies. Nothing in this Article XIII shall prevent Lessee from effecting insurance hereunder a blanket policy or policies; provided, that any such policy or blanket insurance of the kind provided for Subsections 13.01(a) and (f) shall specify therein (or Lessee shall furnish Lessor with a written statement from the insurer under such policy specifying) the amount of the total insurance allocated

to the Property and equipment on the Property, which amount shall be not less than the amount required by Section 13.01 hereof.

Section 13.04. Noncancellation. All insurance policies shall provide, to the extent obtainable, an agreement by the insurer that it will not cancel such policy except after thirty (30) days prior notice has been given to Lessor, that it will waive any right of subrogation that such insurer may have, and that any loss otherwise payable thereunder shall be payable notwithstanding any act of negligence of Lessor or Lessee or any occupant claiming under Lessee which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.

Section 13.05. Contest of Claims. Lessor shall not be required to prosecute any claim against, or to contest any settlement proposed by, any insurer, provided, that Lessee may, at its expense, prosecute any such claim or contest any such settlement. In such event, Lessee may bring such prosecution or contest in the name of Lessor, Lessee, or both, and Lessor will join therein at Lessee's written request upon the receipt by Lessor of an indemnity, satisfactory to it, from Lessee against all costs, liabilities and expenses in connection with such prosecution or contest.

Section 13.06. Adjustment of Losses. Insurance claims by reason of damage to or destruction of any portion of the Property shall be adjusted by Lessee, but Lessor and any Leasehold Mortgagee shall have the right to join with Lessee in adjusting any such loss. Subject to the provisions of Section 13.10 hereof, so long as this Lease is in full force and effect, the proceeds paid pursuant to such claims shall be made available to Lessee.

Section 13.07. Remedies. In the event Lessee at any time refuses, neglects or fails to secure and maintain in full force any or all of the insurance required pursuant to this Lease, Lessor, at its option, may procure or renew such insurance, and all amounts of money paid therefor by Lessor shall be payable by Lessee to Lessor with interest thereon at the rate of four and one-half ($4\frac{1}{2}$) percentage points per annum above the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by the Chase Manhattan Bank of New York, N.A. from date the same were paid by Lessor to the date of payment thereof by Lessee. Lessor shall notify Lessee, and any Leasehold Mortgagee whose name and address has been furnished by Lessee to Lessor pursuant to Section 9.03, in writing of the date, purposes and amounts of any such payments made by it, and Lessor may treat such failure of the Lessee to obtain insurance as a default pursuant to Article XV hereof.

Section 13.08. Effect of Lessor Approval. No acceptance or approval of any insurance policy or policies by Lessor shall relieve or release or be construed to relieve or release Lessee from any liability, duty or obligation assumed by, or imposed upon it by, the provisions of this Lease.

Section 13.09. Certificate of Insurance. Lessee shall deliver to Lessor promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of the insurance which is required to be maintained by Lessee hereunder and Lessee shall, within 30 days prior to the expiration of any such insurance deliver other original or duplicate policies or certificates of the insurers evidencing the renewal of such insurance.

Section 13.10. Application of Proceeds. In the event that the Property, or any part thereof, is damaged or destroyed, Lessee shall promptly give the Lessor written notice of such damage or destruction, setting forth the date on which such damage or destruction occurred. Whenever any of the Property shall have been damaged or destroyed, Lessee shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Sums of money received as payments for any loss or losses under said insurance policies, shall be used and expended for the purpose of fully repairing or reconstructing the Property, or part thereof, which has been destroyed or damaged. Subject to the provisions of this Section 13.10, if any such sums remain after such repair or reconstruction has been fully completed, such remainder shall belong to Lessee.

If the entire amount of any proceeds paid pursuant to any such claim does not exceed \$25,000 then such proceeds shall be payable to Lessee, except that if the Lessee is then in default under this Lease such proceeds shall be paid over to Lessor who shall apply the proceeds first to the rebuilding, replacing and repairing of the Property, and second, to the curing of such default. Any remaining proceeds shall be paid over to Lessee.

If the entire amount of any proceeds paid pursuant to any such claim exceeds \$25,000, then such proceeds shall be paid by the recipient thereof to the "Insurance Trustee" (as hereinafter defined). If, at the time such proceeds become payable, there is a Leasehold Mortgage on the Property, the first Leasehold Mortgagee shall serve as the Insurance Trustee, but if there is no Leasehold Mortgage at that time, the Insurance

Trustee shall be such commercial bank or trust company as shall be designated by Lessee and approved by Lessor, which approval shall not be unreasonably withheld or delayed. the Insurance Trustee shall hold such proceeds in trust and shall disburse same to Lessee but only upon certificates of Lessee, signed by an executive officer thereof and approved by Lessor (which approval shall not be unreasonably withheld or delayed) delivered to the Insurance Trustee from time to time as the work of rebuilding, replacing and repairing the damage or destruction to the Property required by Section 13.11 hereof progresses, each such certificate describing such work for which Lessee is requesting payment, the cost incurred by Lessee in connection therewith and certifying that Lessee has not theretofore received payment for such work. Upon completion of such work any remaining proceeds will be paid to Lessee upon delivery to the Insurance Trustee of a certificate of Lessee, signed by an executive officer thereof, and approved by Lessor (which approval shall not be unreasonably withheld or delayed), to the effect that such work has been completed and complies with the requirements of Section 13.11 hereof; provided, however, that any amount of such proceeds in excess of the cost of the completion of such work, shall, if the Lessee is then in default under this Lease, be paid over to Lessor which shall apply the same to the cost of curing such default, and if any balance remains the same shall be paid over to the Lessee; provided further, however, that if Lessee shall be diligently proceeding to cure such default pursuant to Subsection 15.02(a), any such proceeds shall be paid over to Lessee upon the curing of such default.

Section 13.11. Reconstruction. Lessee shall commence and complete, in a good and workmanlike manner, the reconstruction or repair of any

part of the Property damaged or destroyed after Lessor has approved (which approval shall not be unreasonably withheld or delayed) Lessee's plans, drawings, specifications and construction schedule for such reconstruction or repair.

Section 13.12. Lessee's Rights in Event of Major Casualty. Notwithstanding the provisions of Section 13.11, if the Property shall be substantially damaged or destroyed in any single casualty so that the Property shall be unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business, then at Lessee's option, in lieu of rebuilding, replacing or repairing the Property as provided in this Lease, Lessee may give notice to Lessor, within sixty (60) days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such notice which occurs not less than sixty (60) nor more than one hundred twenty (120) days after the date of such damage or destruction, provided that such notice shall be accompanied by a certificate of Lessee, signed by the President or Vice President thereof, stating that in the reasonable judgement of the Lessee, the Property is economically unsuitable for Lessee's continued use and occupancy by reason of such damage or destruction. This Lease shall thereupon terminate on such termination date, except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date. If this Lease is terminated pursuant to this Section 13.12, all insurance proceeds then held by the Insurance Trustee shall be paid to Lessor.

ARTICLE XIV

Transfer; Assignment; Subletting

Section 14.01. Definitions. As used herein, the term:

(a) "Transfer" means:

- (i) any total or partial sale, assignment or conveyance (other than a Sublease), or any trust or power, or any transfer in any other mode or form of or with respect to this Lease or the leasehold estate in the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same;
- (ii) any transfer of the stock of the Lessee or of any Owner, other than an Owner whose shares are publicly traded; or
- (iii) any merger, consolidation or sale or lease of all or substantially all of the assets of the Lessee or of any Owner, other than an Owner whose shares are publicly traded.

(b) "Owner" means:

- (i) any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, ten percent (10%) or more of the stock or other form of ownership interest of the Lessee; and
- (ii) any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifty percent (50%) of the stock or other form of ownership interest of any entity described in clause (i) or this clause (ii), but shall not include any shareholder of an Owner whose shares are publicly traded.

(c) "Owner whose shares are publicly traded" means an Owner:

- (i) who has filed an effective registration statement with the Securities & Exchange Commission (or its successor) with respect to the shares of all classes of its voting stock or of all classes of any other form of ownership interest which includes voting rights; and
- (ii) whose voting stock or other form of ownership interest described in clause (i) is listed for trading purposes on a securities exchange subject to the regulatory jurisdiction of the Securities & Exchange Commission (or its successor) or is publicly traded over the counter.

Section 14.02. Purposes of Restrictions on Transfer. This Lease is granted to Lessee solely for the purpose of redevelopment of the Property and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Lessee recognizes that, in view of:

- (a) The importance of the redevelopment of the Property to the general welfare of the community;
- (b) The substantial financing and other public aids that have been made available by law and by the United States and the City for the purpose of making such development possible; and
- (c) The fact that a transfer of the stock in the Lessee or a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such stock or with respect to the identity of the parties in control of Lessee or the degree thereof, is for practical purposes, a transfer or disposition of the leasehold interest in the Property then owned by Lessee;

the qualifications and identity of Lessee and any Owner are of particular concern to the community and Lessor. Lessee further recognizes that it is because of such qualifications and identity that Lessor is entering into this Lease with Lessee, and, in so doing, is further willing to accept and rely on the obligations of Lessee for the faithful performance of all undertakings and covenants hereby by it to be performed.

Section 14.03. Prohibited Transfers. Except as expressly permitted herein, Lessee, on behalf of itself and any and all Owners, represents and agrees that neither Lessee nor any Owner has made or created and will not make or create or suffer to be made or created any Transfer.

Any transfer made in contravention of this Section 14.03 shall be void and shall be deemed to be a default hereunder whether or not the Lessee knew of or participated in such transfer.

Section 14.04. Permitted Transfers. Notwithstanding the provisions of Section 14.03, the following transfers shall be permitted hereunder;

- (a) Following issuance of the Certificate of Final Completion, any Transfer to (i) an entity which is, in the reasonable judgment of Lessor, one with demonstrated competence in the business of real property management and in the management, leasing and operation of retail and office space, or (ii) an entity which retains, under arrangement satisfactory to Lessor, another entity as manager of the Property, which other entity is, in the reasonable judgment of Lessor, one with demonstrated competence in the business of real property management and in the management, leasing and operation of retail and office space. As used in clause (ii) above, the phrase "arrangements

satisfactory to Lessor" may include approval by Lessor of the agreement under which the managing entity is retained, a requirement that there shall be no change in the identity of the managing entity or in the duties and obligations of such managing entity without prior approval of Lessor, or such other conditions as may be reasonably imposed by Lessor in order to insure that the Property shall be competently managed.

- (b) Any Transfer to an Institutional Lender by Leasehold Mortgage or following issuance of the Certificate of Final Completion, any Transfer to an Institutional Lender.
- (c) Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage.
- (d) Any Transfer to a joint venture, general or limited partnership, joint stock association or Massachusetts business trust, the majority interest in which is held by Lessee and the sole minority interests in which are held by an Institutional Lender or such other persons, firms, corporations or other entities as to which Lessor shall have given its approval.
- (e) Any Transfer to an entity which is not an Owner, all of the stock or other form of ownership interest of which is owned by an Owner.
- (f) Any Transfer resulting from the death of Lessee or of an Owner, provided that, if, as a result of any such Transfer, there shall not be as lessee or Owner, an entity meeting the requirements of subsection (a) above, then within ninety (90) days after such Transfer, the party or parties to whom such Transfer is made shall either make a Transfer permitted under

subsection (a) above or shall retain another entity as property manager pursuant to the provisions of clause (ii) or subsection (a) above.

Section 14.05. Notice of Transfer; Information as to Shareholders.

- (a) Unless the notice required by subsection (c) of this Section 14.05 shall have been given, Lessee shall give or cause to be given to Lessor written notice of any Transfer of which Lessee or its officers shall have knowledge, within (10) days after any such Transfer shall occur.
- (b) Lessee shall, on the Commencement Date and on each anniversary of the Commencement Date throughout the Term and at such other time or times as Lessor may reasonably request, furnish Lessor with a complete statement, subscribed and sworn to by the President or Vice President and the Secretary or Assistant Secretary of Lessee, setting forth the full names and addresses of holders of the stock of Lessee and the extent of their holdings, and in the event any other parties have a beneficial interest in such stock, their full names and addresses and the extent of such interest as determined or indicated by the records of Lessee, by inquiry which such officers shall make of all parties who on the basis of such records own 10% or more of the stock of Lessee or by such other knowledge or information as either of such officers shall have. Notwithstanding the foregoing, the information required by this subsection (b) shall not be required to be furnished with respect to the shareholders of any Owner whose shares are publicly traded; provided that Lessee or such Owner shall

furnish the Lessor with: (i) a copy of each annual report filed by such Owner with the Securities and Exchange Commission during the Term pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended to the date hereof and (ii) a copy of any proxy statement filed with the Securities and Exchange Commission by such Owner with respect to the election of its directors.

- (c) With respect to any Transfer permitted pursuant to subsection (a) of Section 14.04, Lessee shall give or cause to be given, not less than thirty (30) days prior to any such Transfer, notice that such Transfer is contemplated, which notice shall specify the identity of the proposed transferee and shall state either (i) the qualifications of such proposed transferee demonstrating the competence of such proposed transferee in the business of real property management and the management, leasing and operation of retail and office space, or (ii) with particularity, the arrangements which have been made by the proposed transferee for the retention of a manager of the Property, including the qualifications of such proposed manager demonstrating the competence of such proposed manager in the business of real property management and the management, leasing and operation of retail and office space and including a copy of the proposed agreement by which such proposed manager is to be retained. Such notice shall be accompanied by a copy of the form of agreement by which Lessee proposed to satisfy the requirements of Section 14.06. Within thirty (30) days after such notice is given Lessor shall respond to such notice and shall indicate in its response (i) whether the proposed

form of agreement required by Section 14.06 is satisfactory and if not the reasons therefor, and (ii) whether the proposed transferee meets the requirements of subsection (a) of Section 14.04 and if Lessor shall indicate that such proposed transferee does not meet such requirements, Lessor shall state, with particularity the reasons giving rise to such judgment. If Lessor shall fail to so respond within such time, the proposed form of agreement accompanying such notice shall be conclusively deemed to be satisfactory to Lessee and the proposed transferee shall be conclusively deemed to meet the requirements of subsection (a) of Section 14.04.

Section 14.06. Effectuation of Certain Permitted Transfers. No Transfer of the nature described in clause (i) of subsection (a) of Section 14.01 and permitted pursuant to Section 14.03 (other than a Transfer by a Leasehold Mortgage) shall be effective unless, at the time thereof, the entity to which such Transfer is made (other than a Leasehold Mortgagee), by instrument in writing satisfactory to Lessor and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Lessor, expressly assume all of the obligations of Lessee under this Lease and agree to be subject to all conditions and restrictions to which Lessee is subject; provided, however, that with respect to any Transfer directly resulting from the foreclosure of a Leasehold Mortgage, or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage, such transferee shall not be required to assume any liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee's actual ownership of the leasehold estate created by this Lease; and provided further, that the fact that any such transferee of, or any other

successor and interest whatsoever to, the leasehold estate in the Property, or any part thereof, shall, whatever the reason not assume such obligations or so agree, shall not (unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Lessor) relieve or except such transferee or successor of or from such obligations, conditons or restrictions, or deprive or limit Lessor of or with respect to any rights, remedies or controls with respect to the leasehold estate in the Property or the construction of Improvements.

Section 14.07. Transfers of Lessor's Interests. Lessor represents and agrees for itself, its successors and assigns, that Lessor has not made or created and that it will not, prior to the first to occur of:

(a) the Rehabilitation completion date set forth in Section 10.07;
or

(b) the issuance of the Certificate of Finale Completion,
make or create or suffer to be made or created any total or partial sale, assignment, conveyance, mortgage, trust or power, or other transfer in any mode or form of or with respect to Lessor's reversionary interest in the Property or any part thereof or any interest therein or any contract or agreement to do any of the same, without the prior written consent of the Lessee, which consent Lessee may in its sole discretion withhold. At any time after the Rehabilitation completion date set forth in Section 10.07 or issuance of the Certificate of Final Completion, Lessor may sell, assign, mortgage, convey or otherwise transfer all or any part of its interest in the Property or this Lease without obtaining consent of Lessee; provided, that the assignee, mortgagee, purchaser or transferee shall expressly assume all of the obligations of Lessor hereunder by a written instrument (in form and substance reasonably

satisfactory to Lessee) delivered to Lessee at the time of such sale, assignment, conveyance or other transfer.

Section 14.08. Subletting. Subject to the provisions of Sections 4.06 and 4.07, Lessee shall have the absolute right, without the necessity of obtaining the consent or approval of Lessor, to sublet any part of the Property or Improvements at any time and from time to time during the Term to such person or persons and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper; provided, however, that at any one time Lessee shall not sublease to any one Subtenant or combination of Subtenants which, to the actual knowledge of Lessee, are under common ownership, more than any part of parts of the Property or Improvements having an aggregate floor area greater than 40,000 square feet or one full floor, without first obtaining Lessor's written approval of any such Sublease, which approval Lessor may in its sole discretion withhold. If Lessee shall contemplate making any Sublease with respect to which Lessor's approval is required pursuant to the foregoing sentence, Lessee shall submit to Lessor a copy of such proposed Sublease together with any information concerning the identity and financial worth of the Subtenant as Lessor may reasonably request. Within thirty (30) days after submission of such proposed Sublease and information, Lessor shall notify Lessee whether the proposed Sublease is approved and if the same is not approved the reasons for such disapproval. In the event Lessor shall fail to so respond within thirty(30) days after submission of such Sublease and information, the same shall be conclusively deemed to have been approved by Lessor.

Section 14.09. City Lease. Lessor represents and warrants to the Lessee that immediately prior to the execution and delivery of this Lease, the City and Lessor have executed and delivered the "City Lease",

by which the City, as lessor, has demised to the Lessor, as lessee, portions of the Property now owned by the City, as more particularly described in the City Lease. Lessee hereby acknowledges that it has received a true and correct copy of the City Lease, at or prior to the execution of this Lease. Lessor covenants and agrees that, promptly upon the written request of Lessee, Lessor will cause the City to enter into an agreement with Lessor and Lessee providing that in the event of a termination of the City Lease, the possession of Lessee under the terms of this Lease shall not be disturbed so long as an Event of Default shall not occur hereunder and that, following any such termination of the City Lease, the City shall assume and agree to be bound by all of the obligations of the Lessor hereunder if Lessee shall agree that, upon request of the City following a termination of the City Lease, Lessee will attorn to the City and will execute and deliver such instruments as the City shall reasonably request to confirm such attornment.

In connection with the City Lease, Lessor further covenants and agrees that:

- (a) Lessor will not enter into any amendment of the City Lease or enter into any other agreement with the City which might alter the rights or obligations of Lessee under this Lease without first obtaining the consent of Lessee.
- (b) Lessor will punctually perform all obligations to be performed by the Lessee under the City Lease and, at the request of Lessee, will promptly cure any default by the Lessee under the City Lease.
- (c) Lessor will not permit the City Lease to be terminated for so long as this Lease is in effect.

(d) Lessor shall, upon the request of Lessee:

- (i) diligently enforce the rights and remedies available to the Lessee under the City Lease; and
- (ii) require diligent and prompt performance by the City under the City Lease of all of the obligations of the City under the City Lease.

(e) Lessor shall promptly send to Lessee a copy of any notice of default under the City Lease.

(f) Lessor will cause the City to execute, acknowledge and deliver certificates as required by Section 18.03 hereof.

Section 14.10. Nondisturbance. Lessor shall, from time to time, promptly upon request of Lessee, (i) enter into agreements with Lessee and one or more Subtenants, and (ii) cause the City, as Lessor under the City Lease, to enter into agreements with Lessee and one or more Subtenants, which agreements shall provide that in the event of a termination of the City Lease or of this Lease or both, the possession of such Subtenants shall not be disturbed so long as such Subtenants shall agree that, upon request of the City or the Lessor following a termination of this Lease or of both this Lease and the City Lease (as the case may be), such Subtenants will attorn to the party requesting same and will execute and deliver such instrument as the party requesting such attornment may require in order to confirm such attornment. Notwithstanding the foregoing, Lessor shall not be required to recognize, or to cause the City to recognize, the nondisturbance rights of any Subtenant under a Sublease providing for a term of more than fifteen (15) years, including extensions and renewals, unless such Sublease has been approved by Lessor. Any Sublease submitted to Lessor for approval shall be deemed approved unless, within thirty (30) days after such a submission,

Lessor shall have given written notice to Lessee of the disapproval of such Sublease, which notice shall specify the reasons for such disapproval.

Section 14.11. Attornment. In the event of a termination of this Lease or of both this Lease and the City Lease, each Subtenant under a Sublease with Lessee shall attorn to Lessor or the City (as the case may be) unless Lessor or the City (as the case may be) shall elect to dispossess such Subtenant. Lessee covenants that each Sublease hereafter executed shall contain a clause expressly providing that the Subtenant thereunder shall attorn to Lessor or the City (as the case may be) in the event of a termination of this Lease or of this Lease and the City Lease, but the absence of such a clause from any Sublease shall not relieve the Subtenant from the provisions of this Section 14.11. Nothing in this Section 14.11, however, shall affect the rights of a Subtenant under a nondisturbance agreement executed pursuant to Section 14.10.

ARTICLE XV

Deposit; Default

Section 15.01. Deposit. Lessor hereby acknowledges the receipt of a good faith deposit, to be retained by Lessor except as hereinafter provided, in the amount of \$100,000 (hereinafter called the "Deposit"). Lessor shall be under no obligation to pay or earn interest on the Deposit, and any interest earned on such deposit shall be the property of Lessor. Except as otherwise herein provided, the Deposit shall be returned to Lessee within ten (10) days after the issuance by Lessor of the Certificate of Final Completion.

Section 15.02. Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

- (a) if Lessee at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Lessee from complying with the terms of this Lease) shall fail (i) to make payment of any installment of Rent, additional rent or of any other sum herein specified to be paid by Lessee, or (ii) to observe or perform any of Lessee's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to any default referred to in clause (i) within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or as to any default referred to in clause (ii) within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default (or, in the case of any default referred to in clause (ii) which cannot with diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence);
- (b) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state

law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof;

- (c) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the property of Lessee or of the Property shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Lessee shall acquiesce in or consent to such appointment;
- (d) subject to Section 13.12 of this Lease, if, at any time during the Rehabilitation, the Property shall remain substantially unattended for a period of sixty (60) consecutive days or if, at any time following issuance of the Certificate of Final Completion, the Property shall remain substantially unoccupied or unattended for a period of sixty (60) consecutive days;
- (e) if Lessee shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution;
- (f) if Lessee shall fail:
 - (i) to make payment of any sum of money specified to be paid by it pursuant to the City Agreement or

(ii) to observe or perform any of Lessee's other covenants, agreements or obligations under the City Agreement, and if any such default shall not be cured as to any default referred to in clause (i) within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or as to any default referred to in clause (ii) within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default (or, in the case of any default referred to in clause (ii) which cannot with diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of same with diligence); and

(g) if a Leasehold Mortgagee who has acquired title to Lessee's leasehold estate makes a Transfer prohibited by Section 14.03.

Section 15.03. Remedies in Event of Default. If an Event of Default shall have happened and be continuing, Lessor shall have the right, at its election, then or at any time thereafter while any such Event of Default shall continue, to give Lessee notice of Lessor's intention either (i) to terminate the Term of this Lease or (ii) to reenter and take possession of the Property on a date specified in such notice, which date shall not be less than ten (10) days after the date of giving of such notice, and on the date specified in any such notice Lessee's right to possession of the Property shall cease and Lessee

shall peaceably and quietly yield to and surrender to Lessor the Property, and if Lessor shall have given notice of its intention to terminate the Term of this Lease, the Term of this Lease shall thereupon be terminated. In the event such notice is given, Lessor shall have the immediate right of reentry and possession of the Property and the right (subject to the rights of Subtenants under nondisturbance agreements executed pursuant to Section 14.10) to remove all persons and property therefrom. Should Lessor elect to reenter as herein provided or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may thereafter either terminate the Term of this Lease or from time to time, without terminating the Term of this Lease, relet the Property or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as Lessor may deem advisable, with the right to make alterations and repairs to the Property.

Section 15.04. Rights in Event of Termination. In the event of any termination of the Term of this Lease as provided in Section 15.02 hereof or as otherwise permitted by law, Lessor may enter upon the Property, and again have, repossess and enjoy the same as if this Lease had not been made (subject to the rights of Subtenants under nondisturbance agreements executed pursuant to Section 14.10), and in any such event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Property but shall forthwith quit and surrender the same, and Lessor shall:

- (a) at its option, and notwithstanding any other provisions of this Lease to the contrary, forthwith be entitled to recover from Lessee (in lieu of all other claims for damages on

account of the termination of the Term of this Lease, including any amounts payable to Lessor by Lessee pursuant to the provisions of Section 15.05) as and for liquidated damages, an amount equal to the excess of all the Rent, additional rent and Tax Payments reserved hereunder or under the City Agreement for the unexpired portion of the Term (in determining the Rent and Tax Payments which would be payable by Lessee subsequent to such reentry, the Rent and Tax Payment for each year of the unexpired term of the Lease shall be equal to the average annual Rent and Tax Payment paid by Lessee from the Commencement Date to the time of the Event of Default, or during the preceding three Fiscal Years, whichever period is shorter) over the fair rental value of the Property at the time to termination for the unexpired portion of the Term, discounted at four (4) percent per annum to present worth; or

- (b) if the termination occurs prior to the return of the Deposit pursuant to Section 15.01, retain the Deposit and any interest collected thereon as its own property as and for liquidated damages in lieu of all other claims for damages on account of the termination of the Lease, including, without limitation, any amounts payable to Lessor by Lessee pursuant to the provisions of Section 15.05; or
- (c) proceed with any rights or remedies available to it under law or equity.

Nothing herein contained shall, however, limit or prejudice the right of Lessor, in any bankruptcy or reorganization or insolvency proceedings, to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute

or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the excess referred to above.

Section 15.05. Rights of Lessor in Event of Reentry. If Lessor shall reenter and obtain possession of the Property by reason of or following any default of Lessee, whether or not the Term shall have terminated, Lessor shall have the right, without notice, to repair or alter the Property in such manner as Lessor may deem necessary or advisable so as to put the Property in good order and to make the same rentable, considering the use of the Property immediately prior thereto, and shall have the right, at Lessor's option, to relet the Property or any part thereof, and Lessee agrees to pay Lessor on demand all expenses incurred by Lessor in obtaining possession, and in repairing and putting the Property in good order and condition, and in reletting the same, including reasonable fees of attorneys, architects and agents, and also any other reasonable and legitimate expenses or commissions, and lessee further agrees to pay Lessor, on the dates on which Rent would have been due as specified herein following such reentry until the end of the Term, the sum of money which would have been payable by Lessee as Rent, additional rent and Tax Payments, if Lessor had not reentered and resumed possession of the Property, deducting only the net amount of rent, if any, which Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of every kind of Lessor which in accordance with the terms of this Lease would have been borne by Lessee) in the meantime from and by any reletting of the Property, and Lessee hereby agrees to be and remain liable for all sums aforesaid, as well as for any deficiency aforesaid, and Lessor shall have the right

from time to time to begin and maintain successive actions or other legal proceedings against Lessee for the recovery of such deficiency or damages or for a sum equal to any installment or installments of Rent, and Tax Payments or additional rent and to recover such sums upon the liability of Lessee herein provided, which liability it is expressly covenanted shall survive the issuance of any action to secure possession of the Property. In determining the Rent and Tax Payments which would be payable by Lessee subsequent to such reentry, the Rent and Tax Payment for each year of the unexpired term of this Lease shall be equal to the average annual Rent and Tax Payment paid by Lessee from the Commencement Date to the time of the Event of Default, or during the preceding three Fiscal Years, whichever period is shorter. Nothing herein contained shall be deemed to require Lessor to wait to begin such action or other legal proceedings until the date when the Term would have expired by limitation had there been no such default by Lessee.

Section 15.06. No Termination. No such reentry or taking of possession of the Property by Lessor shall be construed as an election on Lessor's part to terminate the Term unless a written notice of such intention be given to Lessee or unless the termination hereof be decreed by a court of competent jurisdiction. The words "enter," "reenter" and "reentry" are not restricted to their technical legal meanings.

Section 15.07. Rights of Leasehold Mortgages. Lessor agrees to accept performance and compliance by any Leasehold Mortgage of and with any term, covenant, agreement, provision, condition or limitation on Lessee's part to be kept, observed or performed hereunder with the same force and effect as though kept, observed or performed by Lessee. In case of the termination of this Lease by reason of the happening of any Event of Default, Lessor shall give notice thereof to any Leasehold Mortgage which shall have notified Lessor of its name and address.

If the Event of Default specified in such notice is a default other than with respect to rent or additional rent and if within thirty (30) days after the mailing of such notice such Leasehold Mortgagee shall commence and be proceeding with due diligence to cure the default specified in the notice, then if such Leasehold Mortgagee within said thirty day period shall pay or arrange to the reasonable satisfaction of Lessor for the payment of a sum of money equal to all Rent and additional rent payable by Lessee hereunder and the Tax Payments as of the date of such termination, in addition to all expenses, costs and fees, including reasonable attorneys' fees, incurred by Lessor in terminating this Lease and in acquiring possession of the Property, together with a sum of money equal to the amount which, but for such termination, would have become due and payable under this lease from such termination date up to and including a period of sixty (60) days beyond the date of the mailing of such notice, less any net rentals or other income which the Lessor may have received from the Property since the date of the Event of Default giving rise to such termination of this Lease, then Lessor and such Leasehold Mortgagee shall, upon the written request of such Leasehold Mortgagee made at any time within the first thirty (30) days of such sixty (60) day period, mutually execute and deliver within the last thirty (30) days of such sixty (60) day period a new lease of the Property for the remainder of the Term, with priority equal thereto, at the rent and upon the terms, covenants, agreements, provisions, conditions and limitations herein contained modified however, mutatis mutandis to reflect the changed circumstances. At Lessee's request, Lessor will enter into an agreement with any Leasehold Mortgagee granting to the Leasehold Mortgagee the rights set forth in this Section 15.07.

Section 15.08. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

Section 15.09. Waiver of Rights of Redemption. Lessee hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (i) to redeem the Property after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ or (ii) which exempts property from liability for debt or for distress for rent.

Section 15.10. Defaults of Lessor. If Lessor at any time during the Term shall fail to observe or perform any of Lessor's covenants, agreements or obligations hereunder, and if any such default shall not be cured, as to any default resulting from the nonpayment of money, within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or, as to any other default, within thirty (30) days after Lessee shall have given to Lessor written notice specifying such default (or, in the case of any default not resulting from the nonpayment of money which cannot with diligence be cured within such thirty (30) day period, if Lessor shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of Lessor within which to cure the same shall be extended for such

period as may be necessary to complete the curing of the same with diligence), then Lessee to the fullest extent permitted by law, shall have the right to elect and pursue any one of the following mutually exclusive remedies:

- (a) the right and option to terminate this Lease and all of its obligations hereunder by giving notice of election to the Lessor, whereupon this Lease shall terminate as of the date of such notice;
- (b) the right to cure any such default, at Lessor's cost and expense, and to deduct the costs and expenses (including reasonable attorneys' fees) incurred by Lessee in effecting such cure, together with interest thereon at the same rate provided for in the last sentence of Section 6.01, from any one or more succeeding payments of Rent due hereunder;
- (c) the right to a writ of mandamus, injunction or other similar relief, available to it under Massachusetts law, against the Lessor (including any or all of the members of its governing body, and its officers, agents or representatives); or
- (d) the right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default.

Section 15.11. Force Majeure. In the event performance of any of their respective covenants, agreements or obligations under this Lease by Lessor or Lessee is prevented, interrupted or delayed by causes beyond its control, including but not restricted to strike, lockout, action of labor unions, riots, storm, flood, explosion, acts of God or of the public enemy, acts of government, acts of the other party prohibited by this Lease, war, invasion, insurrection, mob, violence,

sabotage, malicious mischief, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, fires, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals or delays of subcontractors due to such causes, and not caused by any act or failure to act by the party thereby delayed in such performance, the date or time or times for the performance of such covenant, agreement or obligation by Lessor or Lessee shall be extended for a period of time equal to the number of days the performance of such covenant, agreement or obligation by Lessor or Lessee is so prevented, interrupted or delayed and, in such case, neither Lessor nor Lessee shall be liable for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by Lessor or Lessee in connection with, or as the result of, any such delay in, or nonperformance of, such covenant, agreement or obligation. In the event that Lessor or Lessee intends to avail itself of the provisions of this Section 15.11, Lessor or Lessee shall give written notice of such intent to the other, such notice to be given not more than fifteen (15) days from the date performance of such covenant, agreement or obligations was so prevented, interrupted or delayed.

ARTICLE XVI

Notices and Demands

Section 16.01. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed, if intended

for Lessor, to it at City Hall, Boston, Massachusetts, Attention of the Director, and if intended for Lessee to it c/o The Rouse Company, Columbia, Maryland 21044, Attention of the Secretary. Lessor or Lessee shall, at any time and from time to time, have the right to specify as its proper address for purposes of this Lease any other address or addresses upon giving fifteen (15) days' written notice thereof to the other party.

Section 16.02. Additional Notices Either party may, be written notice to the other, designate no more than three (3) additional persons or entities to whom or which copies of all notices given pursuant to Section 16.01 shall be sent.

ARTICLE XVII

Indemnification

Section 17.01. Indemnification. Lessee shall pay, and protect, indemnify and save harmless Lessor from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses of Lessee and of Lessor), causes of action, suits, claims, demands or judgments of any nature whatsoever (except to those which result from the acts of Lessor) which may be imposed upon or incurred by or asserted against Lessor by reason of (i) any accident, injury to, or death of any person or any damage to property occurring on the Property or any part thereof (except as may result from the acts of Lessor) or (ii) any use, nonuse, condition, or occupation of the Property or any parth thereof or resulting from the conditon thereof or of adjoining sidewalks, streets or ways, or (iii) any failure by Lessee to perform or comply with any of the terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Property or any part thereof or the ownership, occupancy or use thereof.

ARTICLE XVIII

Miscellaneous

Section 18.01. No Personal Liability. No member, official, or employee of Lessor shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official, or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

Section 18.02. Nondiscrimination. Lessee, for itself and its successors and assigns, agrees that during the Rehabilitation of the Property provided for in this Lease:

- (a) Lessee will not discriminate against any employee or applicant for employment because of race, color, sex, religion, or national origin. Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, religion, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessor setting forth the provisions of this nondiscrimination clause.

- (b) Lessee will, in all solicitations or advertisements for employees places by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, or nation origin.
- (c) Lessee will send to each labor union or representative of workers with which Lessee has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Lessee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) Lessee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Lessee's books, records, and accounts by the Lessor, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules and orders.

in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Lessor or the Department of Housing and Urban Development, Lessee may request the United States to enter into such litigation to protect the interests of the United States. For the purposes of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Lessee" shall be changed to "Contractor" or such other term as may in the context be appropriate.

- (h) If at any time the Director of the Boston Redevelopment Authority (hereinafter called the "Director") shall find that Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the provisions of this Section 18.02 the Director shall issue notice of such finding, setting forth the reasons therefor. Said notice shall be sent by registered mail, return receipt requested, to Lessee. Lessee shall have the right to appeal such finding to Lessor within thirty (30) days after receipt by Lessor of written notice of Lessee's intention to appeal said finding, or at the next regular meeting of Lessor, whichever is later Lessor shall hear such appeal at a public meeting.

Upon the failure of Lessee to appeal the findings of the Director, or upon a determination by Lessor subsequent to any appeal, that Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the provisions of Subsection 10.06 (b)

hereof and this Section 18.02, Lessor shall have the right to retain the Deposit as full liquidated damages, but not as penalty, without any deduction or offset whatsoever.

Upon the failure of Lessee to appeal the finding of the Director, or upon the determination by Lessor, subsequent to an appeal of the finding, that the Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the terms and provisions of Subsection 10.06(b) hereof and this Section 18.02, the Director shall send a notice of his finding and any other findings of Lessor related thereto to the following:

- (a) Secretary, Department of Housing and Urban Development;
- (b) Regional Administrator, Department of Housing and Urban Development;
- (c) Commissioner, Federal Housing Administration;
- (d) Director, Boston Office, Federal Housing Administration;
- (e) Massachusetts Committee Against Discrimination in Housing;
- (f) Association of General Contractors;
- (g) The Building Trades Council;
- (h) Mayor, City of Boston;
- (i) Any Leasehold Mortgagee; and
- (j) Such other interested parties as the Director may deem appropriate.

Section 18.03. Estoppel Certificates. Lessor and Lessee shall at any time and from time to time, within ten (10) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same or to any prospective Leasehold Mortgagee, assignee or Subtenant designated by Lessee a certificate stating (i) that the Lease is unmodified and in force and effect (or if there have been modifications, that the Lease is in force and effect as modified,

and identifying the modification agreement, or if the Lease is not in force and effect the certificate shall so state); (ii) the date to which rental has been paid under the Lease, (iii) whether there is an existing default by Lessee in the payment of any rent or other sum of money under the Lease and whether there is any other existing default by either party under the Lease with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iv) whether there are any setoffs, defenses or counterclaims against enforcement of the obligations of Lessor hereunder. After issuance of any such certificate, the issuer shall be estopped from denying the veracity or accuracy of the same.

Lessor shall at any time and from time to time, within ten (10) days of a written request therefor by Lessee, cause the City to execute, acknowledge and deliver to any of the parties mentioned above a certificate disclosing all the matters described above with respect to the City Lease and the obligations of Lessor thereunder, which certificates shall have the same force and effect as certificates issued by Lessor with respect to this Lease pursuant to this Section 18.03.

Section 18.04. Headings. The headings of the various Articles and Sections of this Lease have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

Section 18.05. Consents. Except as herein otherwise provided, whenever in this Lease the consent or approval of Lessor or Lessee is required, such consent or approval shall not be unreasonably delayed or withheld, and shall be in writing, signed by an officer or agent thereunto duly authorized, of the party granting such consent or giving such approval.

Section 18.06. Recording. This Lease, and any modifications thereof or additions thereto, shall be duly recorded by the Lessee among the land records of the Suffolk County Registry of Deeds, and the costs of such recordation and of any and all Federal revenue stamps which legally must be attached to any of said papers shall be paid by Lessee.

Section 18.07. Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Property or any interest in such fee estate.

Section 18.08. Surrender. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably leave and surrender the Property to Lessor in the same condition in which the Property was originally received from Lessor at the commencement of this Lease, except as repaired, rebuilt, restored, altered, or added to as permitted or required by any provision of this Lease and except for ordinary wear and tear. Lessee shall remove from the Property on or prior to such expiration or earlier termination all property situated thereon which is not owned by Lessor, and, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Property not so removed shall become the property of the Lessor, and Lessor may thereafter cause such property to be removed from the Property and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Lessee.

Section 18.09. Covenants Separate and Independent. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by either party shall not discharge or relieve the other party from its obligations to perform the same. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

Section 18.10. Effect of Covenants. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party to this Lease. Subject to the provisions of section 9.05, any person, corporation or other legal entity acquiring any or all of the rights, title and interest of Lessee in and to the leasehold estate in the Property (i) under any judicial sale made under a Leasehold Mortgage permitted by this Lease or as the result of any action or remedy provided therein, (ii) by foreclosure proceeding or action in lieu thereof, in connection with any such Leasehold Mortgage, or (iii) as a result of any legal process or proceedings (other than eminent domain proceedings by public authority), shall thereby become liable under and be fully bound by all of the provisions of this Lease.

Section 18.11. No Partnership. Nothing herein shall be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between Lessor and Lessee, it being understood and agreed that no provision of this Lease, nor any act of Lessor or Lessee hereafter, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of Landlord and Tenant.

Section 18.12. Modification. This Lease may not be modified or amended except by a writing signed by Lessor and Lessee.

Section 18.13. Governing Law. This Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the undersigned Boston Redevelopment Authority and Faneuil Hall Marketplace, Inc. have executed this Lease as of the date and year first above written.

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

BY _____

ATTEST:

FANEUIL HALL MARKETPLACE, Inc.

BY _____

GUARANTY

The Rouse Company (hereinafter called "Rouse") as a joint and several obligor and not as a surety, hereby unconditionally guarantees the payment of all sums to be paid by Lessee under this Lease which become due or which become payable prior to the issuance of the Certificate of Final

Completion, and the prompt performance by Lessee of all of the terms, conditions, covenants and agreements of this Lease which are required to be performed or completed on or before the date of issuance of the Certificate of Final Completion.

Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, incurred by Lessor in enforcing the obligations of Lessee under this Lease or in enforcing this Guaranty. Any assignment or assignments and any subletting or sublettings by Lessee or Lessee's assigns or subleasees, of this Lease, made with or without notice to Lessee, or the Lessor's forbearance or delay in enforcing or exercising any claims, rights or remedies of any kind against Lessee, or any other reason, whether similar to or different from the foregoing, shall in no way affect, impair, discharge, or release, in whole or in part, Rouse from its liability as Guarantor. The obligation of Rouse under this Guaranty is a primary and unconditional obligation, and Lessor may at its option proceed against Rouse in the first instance to collect any payment due under this Lease or enforce any of the terms, conditions, covenants, or agreements of this Lease without first proceeding against Lessee or any other person, firm, or corporation, and should Lessor so proceed, Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, as aforesaid.

The obligations, covenants, agreements, and duties of Rouse under this Guaranty shall in no way be affected, impaired, discharged, or released, in whole or in part, or the amount of recovery limited, by reason of the happening at any time of the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship,

insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of Lessee or any other similar proceeding affecting Lessee, or the disaffirmance, rejection, rescission, or avoidance of this Lease arising out of any such proceeding aforesaid, it being the purpose and intent of Rouse that this Guaranty and the obligations of the Guarantor hereunder shall be absolute and unconditinal under any and all circumstances, and shall not be discharged except by payment and performance as herein provided, and then only to the extent of such payment or performance.

Rouse hereby waives notice of acceptance of this Guaranty and waives any notice of Lessee's nonpayment or nonperformance of any terms, conditions, covenants, or agreements of this Lease.

Rouse acknowledges the provisions of Article XIV of this Lease and agrees not to make any Transfer other than as permitted by Article XIV.

Rouse hereby consents to jurisdiction of the courts of the Commonwealth of Massachusetts in actions in which Rouse may be a party and which are alleged to arise under this Guaranty, but not for any other purpose or any other transaction. Rouse appoints Phil David Fine, Esquire, 1 State Street, of Boston, Massachusetts (or such other person or persons residing or having a place of business in the Commonwealth of Massachusetts whom Rouse may designate from time to time by notice to Lessor given in accordance with the provisions of Article XVI of the Lease) as its agent and attorney upon whom service of process may be made in any action to which Rouse may be a party which is alleged to arise under this Guaranty, and service of process on said Phil David Fine, Esquire, (or such other designee of Rouse) shall be taken as personal service of process upon Rouse.

ATTEST:

THE ROUSE COMPANY

BY _____

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this day of , 1974, before me appeared Robert T. Kenney, Director of the Boston Redevelopment Authority, who executed the foregoing Indenture of Lease on behalf of the Boston Redevelopment Authority and who being by me duly sworn, acknowledge the foregoing Indenture of Lease to be the free act and deed of the Boston Redevelopment Authority.

Notary Public

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this day of , 1974, before me appeared , the of Faneuil Hall Marketplace, Inc. who being by me duly sworn, acknowledged the foregoing Indenture of Lease to be the free act and deed of said corporation.

Notary Public

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this day of , 1974, before me appeared
 , the of The Rouse Company, who being by
me duly sworn, acknowledged, the foregoing Indenture of Lease to be the
free act and deed of said corporation.

Notary Public

SCHEDULE B

Attached to and forming part of a certain Indenture of Lease dated as of
, 1974, between the BOSTON REDEVELOPMENT AUTHORITY and
FANEUIL HALL MARKETPLACE, INC.

That certain lot or parcel of land situate in the City of Boston,
County of Suffolk, Commonwealth of Massachusetts known and described as follows:

Beginning at a point being the intersection of the southerly sideline of Clinton
Street and the westerly sideline of Commercial Street, also being a point on the
Mass. Coordinate System, N496109.90, E720439.77,

thence running in a southerly direction on the westerly sideline of Commercial
Street a distance of 50.25' along a bearing of S07°-46'-43"E,

thence a distance of 64.18' along a bearing of S07°-57'-00"E,

thence 51.73' along a bearing of S07°-47'-36"E,

thence 101.31' along a bearing of S06°-47'-46"E,

thence 64.97' on a bearing of S07°-35'-04"E,

thence turning and running along a westerly direction on the northerly sideline
of Chatham Street a distance of 27.88' along a bearing of S82°-24'-56"W,

thence 234.58' along a bearing of S82°-26'-52"W,

thence 69.05' on a bearing of S82°-30'-07"W,

thence a distance of 188.48' on a bearing of S82°-26'-14"W,

thence 52.66' on a bearing of S70°-42'-58"W

thence turning and running in a northerly direction a distance of 63.93 along a
bearing of N07°-54'-44"W

thence turning and running in a westerly direction a distance of 64.39' along a
bearing os S82°-29'-17"W,

thence a distance of 0.68' on a bearing of S82°-34'-41"W,

thence turning and running in the northerly direction a distance of 2.00' along a
bearing of N10°-43'-40"W,

thence turning and running in a westerly direction a distance of 75.45' along a
bearing of S82°-23'-48"W,

thence turning and running in a northerly direction a distance of 42.87' along
a bearing of N07°-54'-01"W,

thence turning and running in an easterly direction a distance of 132.77' on a bearing of $N82^{\circ}-23'-37''E$,

thence turning and running in a northerly direction a distance of 141.00' along a bearing of $N07^{\circ}-33'-41''W$,

thence turning and running in a westerly direction a distance of 133.59' along a bearing of $S82^{\circ}-26'-14''W$,

thence turning and running in a northerly direction a distance of 48.31' along a bearing of $N07^{\circ}-53'-59''W$, to a point,

thence turning and running along the southerly sideline of proposed North Street along an easterly arc of a curve to the right having a radius of 950.00' an arc distance of 95.31'.

thence continuing along an easterly arc of a curve to the right having a radius of 453.00' an arc distance of 50.01',

thence a distance of 44.38' along a bearing of $N54^{\circ}-02'-48''E$,

thence along a southeasterly arc of a curve to the left having a radius of 11.00' an arc distance of 17.57',

thence a distance of 29.13' on a bearing of $S36^{\circ}-20'05''E$,

Thence turning and running in an easterly direction on the southerly sideline of Clinton Street a distance of 157.25' along a bearing of $N82^{\circ}-25'-17''E$ to the westerly property line of Durgin Park Parcel

thence turning and running in a southerly direction along the westerly sideline of Durgin Park a distance of 57.06' on a bearing of $S07^{\circ}-49'-29''E$

thence turning and running in an easterly direction a distance of 66.00' on a bearing of $N82^{\circ}-26'-42''E$,

thence turning and running in a northerly direction along the easterly property line of Durgin Park a distance of 57.09' on a bearing of $N07^{\circ}-49'-28''W$,

thence turning and running in an easterly direction a distance of 89.88' on a bearing of $N82^{\circ}-25'-17''E$,

thence a distance of 152.35' on a bearing of $N84^{\circ}-28'-26''E$,

thence a distance of 46.79' along a bearing of $N84^{\circ}-22'-47''E$ to the point of beginning.

Containing an area (excluding Quincy Market Building) of one hundred eighty-one thousand six hundred thirty-six (181,636) square feet, more or less.

TOGETHWE WITH all of the rights, title and interest of the Lessor in and to all or any portion of the streets and sidewalks abutting or adjacent to the property described above (including without limitation, Clinton Street, Chatham Street and Commercial Street as shown on Schedule B), but subject to the rights of the public therein.

SUBJECT TO AND TOGETHER WITH the easements, privileges, rights of use and obligations granted to and reserved by the City as more particularly described in Exhibit II of the City Lease.

SCHEDULE C
OF THAT CERTAIN
INDENTURE OF LEASE
BETWEEN
BOSTON REDEVELOPMENT AUTHORITY
AND
FANEUIL HALL MARKETPLACE, INC.

<u>EXISTING TENANT</u>	<u>RENT PER SQ.FT.</u>	<u>EXISTING TENANT</u>	<u>RENT PER SQ.FT.</u>
Atlantic Provisions Co.	\$4.54	Lawrence Fruit Co.	\$3.70*
Mort Berenson	3.85	Lipinski Florist	3.70*
Bob's Meats	4.14	Lorden Florist	3.70*
J. Bruno & Son	4.08	Marion's Restaurant	3.70
R. Connolly	2.84	Paul Marks	3.82
Crystal Meat Co.	3.73	Mayflower Meats	3.54
G. Govoni & Son	4.16	Montilio's Pastry Shop	3.95
J. Dembro Co.	3.25	Henry Mullen	3.82
Doe, Sullivan Co.	3.28	Pasta Plaza	3.28
Food Service Co.(Paul Judge)	3.70	Salty Dog Seafood	3.70*
G. & G Supply Co.	3.83	South Fruit & Produce	2.61
F. H. Johnson	3.65	United Provisions Co.	3.44
		E. N. West	2.84

*These tenants are presently occupying basement space. Their rentals for purposes of Subsections 4.06(a) and (b) shall be \$3.70, an amount equal to the average rent paid by the other Existing Tenants for street floor space in Quincy Market Building.

SCHEDULE E

(Letterhead of General Contractor)

(Date)

Faneuil Hall Marketplace, Inc.
c/o The Rouse Company
American City Building
Columbia, Maryland 21043

Gentlemen:

This letter is being delivered to you, in consideration of being awarded a contract for the rehabilitation of North Market Building, South Market Building, and Quincy Market Building in the Downtown-Waterfront-Faneuil Hall Urban Renewal Area in the City of Boston, Massachusetts, as evidence of our undertakings in connection with equal employment opportunity.

We understand that opportunities for minority groups to obtain adequate employment have been severely limited; that it is the policy of the Federal government and the City of Boston to insure the fullest possible employment opportunities in every construction job involving, directly or indirectly, public assistance; and that you are obligated to the Boston Redevelopment Authority (the "Authority") to take certain steps to help ensure the creation of such opportunities. We further understand that under the provisions of the Lease between you and the Authority, you must submit to the Authority assurance that your contractor will assist you in meeting these obligations. Finally, we understand that if in the course of construction there is a failure to comply with governmental policies pertaining to equal employment opportunities, you will be in default under the Lease and likely to incur serious penalties.

Accordingly, we hereby agree, as part of the inducement to you for entering into said construction contract with us, to do the following things:

- (1) We shall assist you in every way in carrying out the requirements of Section 18.02 of the Lease and the President's Executive Orders to which Section 18.02 refers and with which we have familiarized ourselves.
- (2) We shall observe all of the practices and procedures set forth in the "Equal Opportunity Compliance Policy" of the Boston Redevelopment Authority, with the provisions of which we also have become familiar, including the requirement to submit to the Authority an acceptable "Plan of Affirmative Action for Equal Employment Opportunity".

- (3) We shall assist in every way to ensure that you do not fall into default under the provisions of the Lease and will assist you and the Boston Redevelopment Authority in every reasonable way to help to provide greater employment opportunities for members of minority groups.

By _____
GENERAL CONTRACTOR

BOSTON REDEVELOPMENT AUTHORITY
EQUAL OPPORTUNITY COMPLIANCE POLICY

ADOPTED FEBRUARY 20, 1969, REVISED SEPTEMBER 7, 1972

To assure execution of Affirmative Action to provide equal employment opportunity and prevent discrimination regardless of race, sex, creed, color or national origin, in accordance with Executive Order of the President No. 11245, as amended by 11375, the Boston Redevelopment Authority establishes the following policies, practices and procedures for the selection of contractors and subcontractors, site preparation, demolition, rehabilitation construction, service contracts and redevelopment programs under the Authority's jurisdiction and control:

I. Every proposed contract to which the Authority is a party for professional or technical services, including those for planning, design, engineering and appraisal work shall be submitted to the Contract Compliance Officer for Equal Opportunity, hereinafter referred to as "Compliance Officer." The Authority whenever possible will solicit minority contractors to submit bids and proposals for any of the above-mentioned contracts. The Authority will propose co-venturing and joint venturing with minority contractors whenever possible. If the proposed firm has dealt previously with the Authority, the Compliance Officer will review the record of its affirmative action programs for the employment of minorities. No contract shall be submitted for the Authority's approval until a written evaluation of these employment practices has been prepared by the Compliance Officer. The Contract Compliance Officer may recommend to the Director of the Authority that any proposed contractor with the Authority comply with such of the following requirements of this Equal Opportunity Compliance Policy, as the Contract Compliance Officer may deem appropriate.

II. Prior to the conveyance of any real property, there must be submitted, together with the developer's form of construction contract, before said contract is executed, a "Plan of Affirmative Action for Equal Opportunity" prepared by the proposed contractor containing the following information:

1. A statement of contractor's current policy with respect to equal opportunity; a description of how this policy is implemented and the extent of the contractor's achievement in the employment of minorities.
2. A statement of the contractor's goal to utilize an adequate representation of minority subcontractors on this project.
3. Identification of the goals which the contractor has established for the employment of minority groups on the project, and of the affirmative action which he will take to insure or facilitate their employment, including:
 - a. Professional, technical and clerical personnel;
 - b. Field and/or construction personnel;
 - c. Employees of subcontractors;
 - d. Employees of suppliers; and
 - e. Apprenticeship and upgrading.
4. An estimate of the anticipated total minority employment by category and trade.
5. One copy of each pertinent Union Collective Bargaining Agreement.
6. A statement of the contractor's anticipated plan for affirmative action for equal opportunity in connection with any contemplated co-venture or joint venture.
7. A letter of intent between the developer and the contractor, in form acceptable to the Authority, requiring the contractor to perform in accordance with this Equal Opportunity Compliance Policy and under the Land Disposition Agreement between the Authority and the developer, and further requiring the contractor to insert a complete text of the non-discrimination clause of

... 1 through 5 of the President's Executive Order No. 11246 in every contract, subcontract and purchase order, and an executed copy of the Bid Conditions Certificates.

8. Evidence that the contractor will require the submission of such a Plan for Affirmative Action by proposed subcontractors and will await approval of each such plan by the Compliance Officer prior to the execution of the subcontract.

After the contractor has submitted its Plan for Affirmative Action, and prior to execution of the construction contract and subcontracts:

1. The developer and his proposed prime contractor and subcontractor will request the Compliance Officer to hold a pre-award conference. No work shall be performed nor contracts executed with the prime or the subcontractors until the developer or the contractor has been notified in writing of the Contract Compliance Officers approval. At the pre-award conference(s) the contractors will be examined to determine their compliance posture and guided in such revisions and improvements in its Plan for Affirmative Action and equal opportunities as the Contract Compliance Officer may deem appropriate. At all pre-award meetings the Compliance Officer will urge utilization of minority subcontractors. The developer shall be considered in breach of the Land Disposition Agreement for failure by any of the parties to comply with above revisions.

2. The Contract Compliance Officer shall investigate the proposed contractor's prior records in Affirmative Action for Equal Opportunity and submit findings in writing to the Director of the Authority, together with a written evaluation of the proposed prime contractor's Plan for Affirmative Action.

3. No approval will be given by the Director with respect to a proposed construction contractor or subcontractor until the written recommendations of the Contract Compliance Officer have been considered.

III. The Authority' closing attorney at the request of the Contract Compliance Officer will arrange a pre-closing conference with the developer and the approved contractor and approved subcontractors. The conference will be attended by the closing attorney and the Contract Compliance Officer, with representation from the HUD regional office where required. The following matters will be discussed at the conference:

1. The prime contractor's responsibility for following up on affirmative action by subcontractors.
2. Instructions to the contractor for maintenance on the site of a daily report on employment showing total number and non-whites employed by trade, and for the submission of bi-monthly labor reports to the Contract Compliance Officer.
3. Instructions to the contractor for providing each of his subcontractors with the required forms for public posting.
4. Instructions to the contractor for notifying all unions of equal opportunity requirements of his contract.
5. Contractor's responsibility for recruitment efforts in the utilization of minority group subcontractors.
6. Other aspects of affirmative action including apprentice and other training programs.
7. BRA procedure for insuring and facilitating affirmative action.
8. Urge representative use of minority subcontractors.
9. Advise the contractor to appoint a responsible officer of his organization as Equal Opportunity Officer for this project.

Any contractor who is a participant, in or is a member of an organization or association which participates in, an area-wide equal employment opportunity program (Boston Plan) which is approved by the Department of Housing and Urban Development and the Office of Federal Contract Compliance for the purpose of effectuating the goals of Executive Order 11246, shall be exempt from the requirement of developing and maintaining a written affirmative action program.

IV. A. The Contract Compliance Officer will furnish the Director with bi-monthly reports on the progress of the equal opportunity program development.

Where indicated the Contract Compliance Officer will:

1. Discuss failures to comply with the developer and the contractor.
2. Undertake on-site review of employment.
3. Recommend appropriate action to insure compliance with these policies and procedures.

B. In any case in which a contractor or subcontractor fails to adhere to the provisions of this Equal Opportunity Compliance Policy or its Plan for Affirmative Action, or fails to make every positive and acceptable effort to do so, the developer shall be considered in breach of the Land Disposition Agreement. The Director will notify any such developer and will exercise whatever sanctions necessary to effect compliance. The contractor and/or subcontractor may be declared ineligible for further approval for work on Government contracts, Urban Renewal Parcels and Federally-Assisted construction contracts.

